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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

DIANNE CASTANO, ERNEST PERRY and GEORGE SOLOMON, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED vs. THE AMERICAN TOBACCO COMPANY, INC.; AMERICAN BRANDS, INC.; R. J. REYNOLDS TOBACCO COMPANY; RJR NABISCO, INC.; BROWN & WILLIAMSON TOBACCO CORPORATION; BATUS, INC., BATUS HOLDINGS, INC.; PHILIP MORRIS INC.; PHILIP MORRIS COMPANIES, INC.; LIGGETT & MYERS, INC.; LIGGETT GROUP, LTD.; LORILLARD TOBACCO COMPANY, INC.; LORILLARD INC.; LOWES CORPORATION; UNITED STATES TOBACCO COMPANY; UST, INC.; AND TOBACCO INSTITUTE, INC.	:	Civil Action No. 94-1044 C/W 94-3000 Section: "C" (5)

July 12, 1996

Richmond, Virginia

VOLUME I

The deposition of RONALD A. TAMOL, SR., taken at the instance of the plaintiffs, before Carol Hill, a Notary Public for the State of Virginia at Large, beginning at 9:16 a.m., at The Jefferson Hotel, Franklin and Adams Streets, Richmond, Virginia; said deposition taken pursuant to the Federal Rules of Civil Procedure.

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MR. RUSS HERMAN: Good morning, I'm Russ Herman of New Orleans. I represent the Castano plaintiffs in this action.

MR. STEVE HERMAN: Steve Herman of Herman, Herman, Katz & Cotlar for the plaintiffs.

MR. WARREN: Robert Warren, law offices of Peter Angelos, for the plaintiffs.

MR. KING: Richard King, law clerk for Herman, Herman, Katz & Cotlar.

MR. CLINARD: Noel Clinard, Hunton & Williams, for Philip Morris Incorporated.

MR. GAY: Charley Gay for Philip Morris Incorporated.

MR. DELACROIX: Scott Delacroix for Philip Morris Incorporated.

MR. ALLEN: Michael Allen of Richmond. I represent the deponent, Ronald Tamol.

MR. COPLEY: I'm Steven Copley for Lorillard Tobacco Company.

MS. BRAUN: Joy Braun for Brown & Williamson, a successor by merger to the American Tobacco Company.

MS. BERTAUT: Carmelite Bertaut for Brown & Williamson Tobacco Corporation.

MR. RUSS HERMAN: Good morning, everybody.

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The deposition this morning is being taken pursuant to the Federal Rules of Civil Procedure.

Mr. Tamol, my name is Russ Herman. I represent the Castano plaintiffs.

During the question and answer session that we have and your deposition, you will take an oath and be sworn to tell the truth. Do you understand that?

THE WITNESS: Yes, I do.

MR. RUSS HERMAN: Would you please administer the oath.

RONALD A. TAMOL, SR., called by the plaintiffs, first being duly sworn, testified as follows:

EXAMINATION

BY MR. RUSS HERMAN:

Q Mr. Tamol, should any of my questions be unintelligible or should you need me to restate a question or should my questions be garbled, indicate that to me and I will do my best to state a question which is understandable and you feel that you can answer. Fair enough?

A Right.

Q You're represented by counsel here this

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morning, Mr. Allen. Should Mr. Allen or any of the other attorneys at the table object to a question which I ask, please don't answer my question.

Let Mr. Allen or the other attorneys object, and then Mr. Allen will instruct you whether or not you should answer the question or make any other comments that he feels necessary to make.

In the event that you are instructed not to answer a question, we will proceed to other questions, and plaintiff will reserve his right to join issue on whatever the question was and the instruction before the magistrate of the judge, if that becomes necessary. That way we can move through your deposition.

You have a right to read and sign your deposition or to waive that right. At this time either yourself or counsel can state for the record what your pleasure is.

MR. ALLEN: We will read the transcript.

MR. RUSS HERMAN: The reading and the signing of the deposition has not been waived?

MR. ALLEN: Correct.

MR. RUSS HERMAN: The stipulation which we have under the Federal rule is that all other objections except as to the form of the question

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are reserved until such time as some use is sought to be made of the deposition and a proceeding.

Is that stipulation, Mr. Allen, sufficient for you?

MR. ALLEN: That's agreeable.

Q At any time during the deposition, Mr. Tamol, please feel free if you want to take a recess, it's perfectly permissible. As you can see, we have provided some Diet Cokes and coffee or whatever in the room, and water. At any time just let Mr. Allen or myself know, and we will recess.

So you know that our intentions -- It's our intention to follow the Court's order, which I have identified with your initials as Exhibit RAT Number 1, for Ron A. Tamol Number 1, to distinguish it from any exhibits for other depositions or at trial, or in the event your son Ron A. Tamol, Jr., is taken, those exhibits will be RATJ-1.

Exhibit RAT-1 is the order of United States -- the United States' magistrate in this case filed of record on May 24, 1996. It sets forth the seven categories of questions which we will ask you about during this deposition.

Are you familiar with that order?

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A Yes, Mike has made me aware of it.

Q Have you had an opportunity to meet with counsel before this deposition?

A Yes, I have.

Q On how many occasions have you met with counsel approximately before this deposition to discuss any subject of the deposition, without telling me what was discussed?

A I imagine four or five times.

Q During the course of those four or five meetings, have you had occasion to review any or all of the documents which Ms. Heep turned over to the Federal Bureau of Investigation?

MR. ALLEN: I'm going to object to that on the grounds of privilege. The content of the meetings with counsel and preparation for the deposition fall under the privilege. I will instruct the witness not to answer that.

MR. RUSS HERMAN: Counsel, just for the record, the rule is: Any documents or writings which were used in connection with the preparation for a deposition are the subject of inquiry during a deposition. We will reserve our rights to that.

Q How long did those meetings take place

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overall, approximately? How many hours have you spent preparing for the depositions?

A I imagine maybe 10 hours, 8 to 10.

Q I'm going to begin by asking you a few background questions. When did you first become employed at Philip Morris?

A As I recall, it was 1963, January of 1963.

Q Did you work continuously for Philip Morris until your retirement?

A Yes, I did.

Q Was this full-time employment with Philip Morris?

A Yes, it was.

Q When did you retire?

A I believe it was May 1992.

Q During the period of time from 1963 to 1982 (sic) at Philip Morris, were you employed generally with regard to tobacco and tobacco products?

A First of all, you said 1982. It's 1992.

Q I'm sorry. I will repeat the question. Thank you, Mr. Tamol.

From the period of 1963 to 1992 during your employment with Philip Morris, were you engaged in employment related to primarily tobacco as distinguished from other products that Philip Morris

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might have been engaged in during that period of time?

A To answer your question, I was engaged in activities at Philip Morris R&D, not all of which regarded tobacco.

Q Would you, Mr. Tamol, help us out, just describe generally those activities, whether they involved tobacco or other matters.

A Do you mean the assignments I had?

Q Yes.

A When I joined them in '63, I first worked in a newly-constituted tobacco process, which was the paper-making process, making tobacco for a couple of years.

Then I moved into, if I recall correctly, the brand development project, which was for a period of, I believe, five or six years.

Then I moved into the expanded tobacco, process development area for, I believe, a couple of years.

Then I became plant engineer for the research and development center and directed the maintenance and the construction activities at the R&D center for about ten years.

Then I moved into a design group designing -- in the process development division

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designing process equipment.

Then the latter part of that particular activity, I was involved in ventilation studies regarding rooms, buildings.

Q In connection with your employment at Philip Morris, did you have occasion to sign contracts and agreements between yourself and Philip Morris regarding your employment?

A Yes, as I recall.

Q I am going to show you Plaintiffs' Exhibits 2, 3, and 4 and ask if these agreements were signed by you with Philip Morris.

MR. ALLEN: Take your time and read the agreement.

A (Complying.)

Q While you're reading the agreement, I will identify them for purposes of the record. Please take your time.

Exhibit RAT-2 is dated January 2, 1963, and has a Bates stamp 3462.

RAT Exhibit 3 is signed April 7, 1986, and begins with Bates stamp 3459. And the general release agreement is dated Exhibit 4, RAT Exhibit 4, and begins Bates stamp 23975 and is dated April 30, '92.

A Do you want to take them serially one at a

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time, Russ?

Q Certainly.

MR. ALLEN: I would like to begin with Number 2, and then he can take a break and read 3, and you can ask him those questions. We will proceed in that fashion.

A Would you repeat the question regarding this.

Q Yes. Would you look at RAT Exhibit 2. It's dated January 2, 1963.

A Yes.

Q Is that an agreement which you signed, and does your signature appear on the document?

A Yes, that's my signature at the bottom of the document. I would agree that I signed that.

Q It is an agreement between yourself and Philip Morris; is that correct?

A That's correct.

Q Who is the individual which signed for the employer?

MR. ALLEN: I would object, unless this is a question intended to clarify a handwritten notation on the document.

MR. RUSS HERMAN: That's exactly why I'm asking the question.

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MR. ALLEN: Do you recognize the name there?

THE WITNESS: No, I don't. I believe that's Jim Frye.

Q Mr. Frye signed on the line that says "Philip Morris Incorporated, By: Employer"; is that correct?

A That's what it appears to me, yes.

Q Do you recognize the signature of the individual on the line that says "In presence of"?

A No, I don't.

Q Was this agreement, to your knowledge, ever changed?

MR. ALLEN: Objection. It goes to the substance of the agreement. In that respect it's not consistent with the order of the Magistrate Judge Chasez.

Q Well, I will ask another question. Under paragraph 4 where it says that you "will return to Philip Morris all papers, notes, books or other documents belonging to Philip Morris," did that agreement continue throughout your employment?

MR. ALLEN: Objection, that again goes to the substance of the document.

MR. RUSS HERMAN: You're instructing him

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not to answer?

MR. ALLEN: That's correct.

Q I'm going to ask you to look at Ronald Tamol 3.

MR. ALLEN: Give him a moment to read that, also.

MR. RUSS HERMAN: Counsel, I know it's inadvertent and I don't mind you addressing the witness to a particular part of the document, but your fingers are tapping on paragraph 7 as he's looking at it. I know it's inadvertent.

So any time you want to direct him to a particular portion, it's okay with me, but I would like to at least have it on the record.

MR. ALLEN: Let the record show that I tapped on Number 7 immediately after tapping on 6 and before tapping on 8.

MR. RUSS HERMAN: Thank you.

Q Sir, you have read Exhibit RAT-3?

A I'm just finishing.

Yes, I have.

Q Does it bear your signature?

A Yes, that's my signature.

Q Is it a document you executed with your employer, Philip Morris, on April 7, 1986?

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A Yes, it is.

Q The tapping paragraph 7, "All memoranda, notes, records, reports, photographs, drawings, plans, papers, computer programs, tapes, slides, or other documents made or compiled by or made available to the Employee during the course of employment, and any copies or abstracts thereof, whether or not they contain confidential information, are and shall be property of the Company and shall be delivered to the Company by the Employee immediately upon termination of employment regardless of the reason for termination."

Did that paragraph number 7 continue throughout your employment?

MR. ALLEN: Same objection. The question goes to the substance of the document.

MR. RUSS HERMAN: Are you directing him not to answer?

MR. ALLEN: I am.

So that we don't have to repeat this each time, I might indicate, if it would be a help to you, Mr. Herman, that our intention is the same as the intention you have stated, which is to follow Judge Chasez's instructions.

For that reason, Mr. Tamol will identify

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documents. He will respond to questions that are consistent with her order that has been identified as RAT Number 1.

There will be an objection to questions that goes to the substance of the document, and he will be instructed not to answer those.

MR. RUSS HERMAN: You instruct him not to answer, Counsel, as you deem fit and proper. That's your prerogative.

Q I show you Exhibit RAT-4, General Release and Agreement.

So you have now read Exhibit RAT-4?

A Yes, I have.

Q Does it have your signature on it on the last page?

A Yes, that's my signature.

Q It was executed on the 30th day of April, 1992; is that correct?

A That's what is written there.

Q Can you tell me the name of the notary public?

A That's Darlene Shannonhouse.

Q It says "Philip Morris USA, By." Could you read that signature to me.

A I would read "Diane M. Roberts."

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Q Page 4, paragraph 8 of the document you have just reviewed, it says, "Tamol acknowledges that during the course of his employment with the Company, he has been entrusted with certain personnel, business, financial, technical and other information and materials which are the property of the company and which involve confidential information concerning the Company's dealings and the Company's employees. Tamol agrees that he will not communicate or disclose to any third party, or use for his own account, without written consent of the Company, any of the aforementioned information or material, except as required by law, unless and until such information or material becomes generally available to the public through no fault of Tamol's."

Paragraph 9 reads, "Tamol shall return to the Company the originals and all copies of any business records of the Company which are or were subject to Tamol's custody or control, regardless of the sources from which such records were obtained, and he shall certify that this has been done after diligent search and inquiry to the best of his knowledge and belief. Tamol may retain records relating to his employment such as evaluations, letters of commendations, employment benefit papers,

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and the like."

10, "Tamol will not in discussing his relationship with the Company and its business and affairs which occurred prior to the effective day of this Agreement disparage, discredit, or otherwise treat in a detrimental manner the Company or its officers, directors and employees."

Paragraph 13 says, and I quote, "Tamol agrees to fully cooperate and assist the Company in any dispute in which the Company is involved, in which Tamol may have been involved. This shall include providing information, documents, et cetera, submitting to depositions, providing testimony and general cooperation to assist the Company in defending its position with reference to any matter. Tamol shall be reasonably compensated for his time and paid for all costs by him expended, including travel, lodging, long distance telephone charges, and related expenses for such assistance."

Have the paragraphs of this agreement which is identified as RAT Exhibit 4 continued in existence to the present date?

MR. ALLEN: Same objection.

Q Sir, looking at Exhibits 2, 3, and 4, the three agreements which you have just identified, can

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you tell us if these are exhibits or are these documents which you took with you when you left Philip Morris' employment?

A I assume they are.

Q Where did you place the documents that you had from your employment with Philip Morris? Where were they physically located beginning in January of 1995?

A Well, they would have been in one of my many files, probably under the heading of "Philip Morris."

Q Where were your files and materials from Philip Morris physically kept, in what location?

A At what point in time?

Q Beginning in January of 1995.

A '95, they were kept at my residence on [DELETED]

Q What is that address?

A [DELETED]

Q In how many different locations -- Was that a residence?

A It's a residence.

Q In how many locations within your residence were documents that you had from your Philip Morris years located? Where were they located in the

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residence?

A They would have been either in my office file area, or they might have been in a file area I had in a bedroom that I used for keeping information, technical information.

Q Were all of the documents that you had accumulated during your employment with Philip Morris that you had possession of, either actual possession or stored somewhere, located at [DELETED] in January 1995?

A There would have been no other location.

Q Were those documents that were at in January of 1995 moved to any other location?

A Not in 1995.

Q In 1996 were they moved to any other location?

A Yes. They would have been moved along with all my other belongings to Hatsy Heep's address.

Q What address was that?

A [DELETED]

Q Both [DELETED] and [DELETED] those physical locations were in [DELETED] is that correct?

A That's correct.

Q During your period of employment from 1963 to 1992 with Philip Morris, you were employed at the

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Richmond facility; is that correct?

A That's correct.

Q How were your documents transported in 1996 from Shady Crest to Hanover, that is, from your house to Ms. Heep's house?

A The mover, when I moved, transported all of the documents.

Q Was that Chris Moving?

A Yes. There is another name for that. It's Mr. Chris. He had some other name. I don't recall what it was.

Q How long -- How many days did it take to move all of the belongings that were at Shady Crest to Hanover?

A It took two days.

Q Were the documents which you had from your Philip Morris' employment in boxes, moved in boxes?

A Well, some were probably in file folders in my desk, and the remainder would have been in boxes.

Q What type of boxes?

A Well, they were boxes that were formerly used for papers. I'm talking about reproduction papers. I might have obtained them from the reproduction facility at Philip Morris when I moved over the years.

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Q Cardboard boxes?
A Cardboard boxes.
Q Any packing boxes of documents?
A There might have been from my office area. I might have put those in packing boxes.
Q Were there any documents that you had stored either in or not in containers in a quonset-type location?
A The documents -- Well, what I had were in the quonset hut, which were stored in boxes.
Q Was what?
A Stored in boxes.
Q Philip Morris' documents?
A Not to my knowledge, no.
Q How many boxes did you have in the quonset hut?
A Oh, probably about 20 maybe, 10 to 20.
Q What was in those boxes?
MR. ALLEN: Objection. We're discussing the Tamol documents?
I waive that objection. Go ahead and answer the question.
A Well, it was information that I had that I accumulated -- I'm something of a pack rat -- over the last 40 years. It was records of -- tax records,

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check stubs.

Also, there were -- some of the boxes had my children's belongings in them that I moved from the home on Buckhill Road.

Then I had boxes of technical literature. This was the journals, "Popular Science," memorabilia over the years, pictures, photographs in general.

And also, there were the receipts I kept for purchases over the years, boxes of those, check stubs. Basically, I threw nothing away.

Q That was your habit, not to throw anything away?

A Essentially, yeah.

Q Were any of the research and development documents of Philip Morris in any of the boxes in the quonset hut?

A To my knowledge, no.

Q Were any of the research and development documents of Philip Morris in your house?

A No. I wasn't aware of any Philip Morris' documents in the house.

Q Do you have any idea how the boxes of documents that -- that is, Philip Morris' documents -- that the sheriff took in the detinue seizure from Hatsy Heep's house -- Hatsy Heep's house got to Hatsy

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Heep's house?

A Would you ask the question again. It's not clear.

Q You were there the day when the sheriff in Richmond served a writ of detinue on Hatsy Heep at her home in Richmond, were you not?

A Yes, I was.

Q You had asked or requested that writ in order to get your personal possessions?

A That's correct.

Q There were Philip Morris documents and materials in boxes that were seized by the sheriff on that day?

A That's not correct. There were only a few Philip Morris items in those "boxes."

Q Well, those few Philip Morris items in those boxes that were seized, how did it get to Hatsy Heep's house?

A They were originally in those boxes.

Q What boxes?

A The boxes that were at her house. They moved from Shady Crest to her house.

Q Those Philip Morris documents moved in boxes from Shady Crest, your home, to Ms. Heep's home on Hanover; is that correct?

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A That's correct.

Q Now, in your office in Shady Crest before you moved to Ms. Heep's house on Hanover, did you have Philip Morris research and development documents?

A In my office? No.

Q Where did you have them?

A Apparently I had them upstairs in the bedroom area.

Q Did you have Philip Morris documents relating to reconstituted tobacco at Shady Crest?

A From what I have seen, I did have those. That's where they had to be.

Q Documents relating to F.A.C.T., F-a-c-t?

A Yes. They had those documents.

Q And documents relating to a CP cigarette development, including Mark VII?

A I was not aware of those documents. I did not have them in my office or did not have them in -- apparently in the bedroom area.

Q Do you know where they were?

A I would guess they were in the quonset hut.

Q That is, the quonset hut where you were storing some items, some 20 boxes of items?

A That's correct.

Q Which you moved to Ms. Heep's house?

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A That's correct.

Q And Philip Morris plant engineering documents, did you also move those from Shady Crest to Ms. Heep's house?

A Apparently I did. They were in some of the boxes.

Q Now, the Philip Morris documents that you moved from Shady Crest to Ms. Heep's house, who moved them -- who moved those documents to Shady Crest?

A Could I ask you a question for clarification? What do you mean by Philip Morris documents?

Q Were these research and development documents, for example, reconstituted tobacco documents, F.A.C.T. documents?

A Yes. There were only a few in number, not this reproduction of books and things of that sort.

Q Who moved those documents?

A They were moved by the mover.

Q No. Who moved them to Shady Crest? Was it you?

A I did.

Q Where did you move them from?

A There were two locations. I had the attic at Buckhill Road, and then I had rented one of these

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facilities for storing, one of those rental rooms, whatever.

I had a lot of junk in there. I don't know of any boxes -- There were some boxes there, but I'm not sure what was in there.

Q Where was that storage facility?

A It was off -- In south Richmond. It was off the Boulevard, off the Boulevard, or on the Boulevard, rather.

Q The research and development documents that were in the storage locker and at Buckhill, where had they been before they were moved there?

A I don't know if I had any Philip Morris documents at the storage locker. I don't know if I had any Philip Morris documents in the attic. I was not aware of that.

Q I will go back and ask you again. Where were the documents, the Philip Morris documents, that were at Shady Crest, where were they physically moved from to get to Shady Crest?

MR. ALLEN: Objection, asked and answered. Go ahead. He said it came from one or two places: The attic at Buckhill or the storage locker on the Boulevard.

A Again, I'm not aware that I had Philip

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Morris documents at either of those locations. If you recall, I retired in May of '92. I carried boxes of documents, not documents, but boxes of journals, et cetera, et cetera, from Philip Morris, which were my property, to Shady Crest.

So in other words, the, quote, sum and substance of all the crates and boxes at Shady Crest were a combination of items I had at Buckhill Road, storage locker, and the things I had stored in my office at Philip Morris before retiring -- or after retiring.

Q How many boxes of documents did you remove from Philip Morris when you retired?

A To my knowledge, I didn't remove boxes of documents. I was removing journals and things of that sort.

Q What did you remove them in?

A Boxes.

Q How many boxes of documents of things did you remove from Philip Morris when you retired?

A The boxes of things I removed were probably 10 or 12.

Q During the course of your employment from 1963 to 1992 at Philip Morris, did you remove from Philip Morris' premises your handwritten notes of

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various Philip Morris-related projects in which you had participated during that period of time?

MR. ALLEN: Object to the form of the question.

A You would have to rephrase the question. It sort of rambled. What are you asking?

Q I'm sorry, let me break it down. You were employed at Philip Morris between 1963 and 1992?

A That's right.

Q While you were employed there, did you make handwritten notes?

A Yes, I did.

Q Did you remove any of those handwritten notes at any time while you were employed by Philip Morris from Philip Morris' premises?

A To the best of my knowledge, no.

Q Did you make copies of them?

A To the best of my knowing, no, no reason to make copies.

Q Did you during your employment at Philip Morris from 1963 to 1992 remove any original or copies of typewritten or printed Philip Morris documents?

A Again, I don't know what you define as documents.

Q Okay, that's a fair question. A document

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is anything with a word on it.

A Can you be more general?

Q Sure. I will break it down for you in English.

A Yes, I removed items such as the retirement benefits plans and things of that sort when I retired, and information.

But, to the best of my knowledge, I did not remove written, what you say, typewritten documents with more than one word on them that were Philip Morris documents. I felt that I had turned in all of those "documents" or left them there in the files.

The exception, I had some information on the F.A.C.T. system, which were not confidential documents.

Q I would just like you to --

A I'm trying to qualify.

Q I appreciate you helping me out, Mr. Tamol. I just want to be clear so the record is clear.

You at no time ever removed any documents which you created or which were -- others created from the research and development department at Philip Morris from 1963 to date?

MR. ALLEN: Objection, that's a mischaracterization of the testimony. Object to

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the form of the question.

MR. RUSS HERMAN: I'm asking the question.

THE WITNESS: Should I answer?

MR. ALLEN: Answer.

A Again, to the best of my knowledge, no, I did not. That was not my -- There was no reason for me to remove those documents.

Q From 1963 to date, you removed or made no copies and removed any Philip Morris documents made by you or others on reconstituted or expanded tobacco; is that correct?

A Well, at that time I would have said yes, I did not. Apparently, it was in the box someplace. It was not my intention to remove them. There was no reason to.

Q At no time from 1963 to date did you make copies of or remove documents from Philip Morris research and development related to the CP or Mark VII project?

A Knowingly, no, I did not.

Q I'm not asking you whether you knowingly did it. Did you do it?

A Apparently I did, because they were found in these boxes. I can't refute that.

Q When did you first become aware after you

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left employment with Philip Morris that you had copies of some Philip Morris research and development documents?

MR. ALLEN: Object to the form of the question insofar it presumes he knows whether it was a copy or what.

You can answer the question.

A Well, I went -- And again, all the boxes of all my stuff were in Hatsy's basement. I had vowed when I moved from Buckhill Road I was going to go over these boxes when I moved them into the quonset hut, for instance, and I never did. It stayed there for about two years.

So one of my goals was to go through all of these boxes and throw out all the junk, everything I had accumulated. That, of course, was irrelevant.

As I was going through the boxes, I ran across one box that was about half-full with some documents from the CP project. I was surprised that they were there. It was a big surprise to me.

I was going to -- What I did is, I went through a first stage of cleaning out, and then I was going through a second stage of cleaning out. I threw out bundles and bundles of junk.

Q Your first stage of cleaning out, can you

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give me a month and year that occurred?

A It was in '96. I believe it was either the end of January or early February.

Q Your second stage of cleaning out?

A I never completed that. I was going through at the time that Hatsy and I broke up.

Q When was that?

A In March, end of March.

Q '96?

A '96.

Q Well, in what month and year did you first become aware that you had Philip Morris documents in Hatsy Heep's basement?

A Regarding the CP, I would argue or comment that it was probably in February.

Q Of 1996?

A '96, yes.

Q Well, in the first or second stage clean-up that you were doing in Hatsy Heep's basement, did you see any Philip Morris documents that were not related to CP, control profile cigarettes?

A No, I didn't, because I didn't finish that stage.

Q Where were the documents in Hatsy Heep's basement the last time you saw them?

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A They were in piles on the floor.
Q Were there boxes?
A There might have been some boxes. Yes, I would say a box, but minimum of boxes, mostly piles.
Q How many boxes of documents?
A Of documents or my -- stuff I wanted to go through?
Q How many boxes of stuff you wanted to go through?
A Boxes of stuff, probably six or seven.
Q Did you ever throw out any of your stuff in garbage bags?
A Yes.
Q What color garbage bags?
A Black.
Q Where did you get them from?
A Bought them at the store.
Q Which store?
A I don't remember.
Q Sam's?
A Probably Sam's, yes. They were cheaper.
Q Do you have your Sam's card with you?
A Yes, I do.
Q Would you mind getting it out and reading to us your Sam's identification number.

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MR. ALLEN: Objection. That goes beyond the scope of what has been permitted under Judge Chasez's order.

MR. RUSS HERMAN: Counsel, I'm not going to argue with you. I believe --

MR. DELACROIX: I will permit him to answer the question. I'm just stating my objection for the record.

MR. RUSS HERMAN: Okay. Fine.

A Yes. It's Sam's.

Q May I see it, please.

Thank you, sir. It says "Ronald Tamol" on it. Would you mind reading the number, serial number, please.

A 4210507572196.

Q What is the date of the card?

A 9/15/95.

Q Thank you, sir.

You said that you did have some after your departure from Philip Morris -- Strike that.

After your departure from Philip Morris in '92, you did have some F.A.C.T. documents; is that correct? F-A-C-T?

A Well, I wouldn't define them as documents. I had information on F.A.C.T.

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Q Would you, just for the record as background, tell us what F-A-C-T stands for.

A It's an acronym for filtered air control technology.

Q Was this, in part, some project that you had worked on at Philip Morris during your employment?

A Yes, it was. The latter two out of the last three years I worked on this project.

Q Let's get some more background. Where were you born, sir?

A In Buffalo, New York.

Q Where did you receive your high school degree?

A In Buffalo, New York.

Q In what year?

A '52.

Q How old are you, sir?

A 62.

Q What is your date of birth, please?

A 4/4/34.

Q After high school, what did you do?

A I went to the University of Buffalo.

Q How long were you at the University of Buffalo?

A Four years.

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Q That resulted in a degree?
A That's correct.
Q In which degree?
A Bachelor of Science.
Q Was it in any particular subspecialty of science?
A Yes, in mechanical -- It doesn't say so, but I studied mechanical engineering.
Q So it was the equivalent of an engineering degree?
A That's correct.
Q Were you employed during your college career?
A Yes, I was.
Q Where were you employed?
A I had some part-time jobs for several years.
Q After your graduation from college with your engineering degree, what did you do?
A I went to work for the Dupont Company.
Q Generally, what type of work did you do for Dupont?
A Mostly doing -- It was process and -- It was process engineering work primarily. It was also some maintenance engineering, cross section of

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engineering positions.

Q Then for whom did you work?

A Then I went to work for U. S. Royal, which is now Uniroyal.

Q What type of work generally did you do?

A I was in the design engineering group.

Q Then where did you go to work?

A Then I came to Philip Morris.

Q In 1963?

A 1963.

Q I won't belabor your employment background. I have some resumes of yours that I will ask you to identify at a later point.

Now, were you ever in the military service?

A No, I was not. I was in ROTC for two years at the University of Buffalo.

Q Have you ever been charged with any criminal offense?

A No, I have not.

Q Have you ever taken the Fifth Amendment in any legal proceeding?

A No, I have not.

Q Have you ever refused to testify as a witness in a case?

A No, I have not.

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Q On any occasion have you been a party to a lawsuit?

MR. ALLEN: I will stipulate he's a party to the detinue action to which you referred earlier.

Q Other than the detinue action, have you ever been a party litigant, either sued anybody or been sued by anybody?

A I believe -- I guess you would call it sued, when I sold the house on Buckhill Road. People claimed the roof was leaking. I was involved in that. That was the action.

Q Who are the names of those people?

A I forget now the people who live there now. They were living there. I don't know if they moved or what.

Q That was in a court in Richmond?

A In Chesterfield -- No, in Richmond, I'm sorry, Richmond. It was in Richmond.

Q Have you ever given a deposition before?

A Well, I guess it was a deposition in some patent litigation for Philip Morris in the early '80s.

Q You were testifying on behalf of Philip Morris in that action?

A Yes, I was.

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Q Any other depositions you have ever given?
A No, that's it.
Q Have you ever been on a jury?
A Yes, I have.
Q On how many occasions?
A I think two or three occasions.
Q What types of cases have you served as a juror?
A I guess they were called criminal cases, I guess, drug dealing, things of that sort.
Q Ever been a foreman of the jury?
A No, I have not.
Q At some point in time you helped form a business or corporation or entity, Ronnell; is that correct?
A That's correct.
Q Would you spell Ronnell for the record, please.
A R-o-n-n-e-l-l Company.
Q Does the name Ronnell for that company, was that a combination of your name and your first wife's first name?
A No. It wasn't. It was a combination of my son's name and my daughter's name.
Q So you have a son by the name of Ron Tamol,

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Jr.?

A That's right.

Q And your daughter's name is?

A Ellen.

Q Ellen Tamol, and is she married?

A She is married.

Q What is her name?

A It's Riley, I believe.

Q Where do you currently live?

A I live at the [DELETED] apartment complex.

Q What is your apartment number?

A [DELETED]

Q What is the address?

A [DELETED]

Q What is your phone number?

A [DELETED]

Q Where does your daughter live?

A I'm not sure where she lives. We have been estranged for several years.

Q Since your divorce from Ms. Tamol? What was your daughter's mother's name?

A Elinor. It's E-l-i-n-o-r.

Q Where does your former wife live?

A She lives in a condominium complex not too

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far from the [DELETED]

Q What is the name of it?

A I forget. I don't remember.

Q How long has she lived there?

A I would imagine about four years.

Q What is her full name?

A Elinor Burns Tamol.

Q Where does your son live?

A He lives in the west end of the city of [DELETED]

Q What is his address?

A I don't know the number. It's [DELETED]

Q Do you know his phone number?

MR. ALLEN: Objection.

A I can't remember, because I just punch his number all the time. It's [DELETED] Maybe [DELETED] but I don't know.

Q When did you form Ronnell corporation, Ronnell, Inc.?

A I formed it in the mid-1970s.

Q What has -- Is Ronnell, Inc., still in existence?

A Yes, it is.

Q It has -- Has it continued in existence

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since you formed it in the 1970s?

A Yes, it has.

Q I'm going to show you RAT Exhibit 5 consisting of Bates stamps 50001 through 50008. The documents report to show the Articles of Incorporation of Ronnell Company, Inc., in October of 1976, October 13, 1976, an Amendment dated March 29, 1995, and a certification by the Secretary of State. I will hand these to you.

Sir, if you look at RAT Exhibit 5, the first page of that exhibit, is that your signature, sir?

A On the first page being --

Q 50001.

A Yes, it is my signature.

Q Am I correct the date is March 29, '95?

A That's correct.

Q Then I would like you to look at page 50006. It's the fourth page of the original articles. Do you see that, sir?

A Yes, I do.

Q Can you make out what day of October it says there?

A No, I can't.

Q Do you see the three names that signed this

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document?

A Yes.

Q Do you know who those folks are or any of them?

A I think the -- It's Richard Obenshain, the first one. I don't know the others.

Q Richard?

A Obenshain.

Q Would you spell that the best way --

A O-b-e-n-s-h-a-i-n.

Q The next two names you don't recognize?

A No.

Q Where it says "directors," it lists you, Ronald A. Tamol; correct?

A That's correct.

Q These are the Articles of Incorporation as amended of Ronnell Company, Inc., under which Ronnell has been constituted, to your knowledge, since it was first organized in 1970; is that correct?

A 1976.

Q I'm sorry. 1976?

A That's correct.

MR. RUSS HERMAN: Counsel, I'm going to hand you so that I don't have to be discourteous, RAT Exhibit 6.

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Let's go off the record for a second, and let me discuss with counsel how we may expedite this.

(Off the record.)

THE VIDEOGRAPHER: We're back on the record at approximately 10:53 a.m.

Q Mr. Tamol, during the recess you have reviewed RAT Exhibit 6 relating to the Ronnell corporation, and you have indicated that Bates numbers 24235 through 24238 are not Ronnell documents. Document 26836 is not a Ronnell document. Documents 11685 through 11762 are not Ronnell documents. Document 11763 are not Ronnell documents. And they have been removed from Exhibit 6.

Now, if you would take your copy of Exhibit 6 -- And I have agreed at the request of your counsel, Mr. Allen, that Exhibit 6 will be sealed and kept confidential, subject to the usual confidentiality order, because I'm advised by Mr. Allen that much of this material you feel is proprietary to you and may form the part of some patent inquiry application.

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A That's correct.

Q So I want to assure you and make the remark in presence of other counsel, I'm certain that no one else will object, that RAT Exhibit 6, the documents themselves, will be sealed and marked confidential and subject to a confidentiality order that Mr. Allen will provide me whenever he's able. I will go ahead and execute.

MR. ALLEN: I appreciate your words to that.

MR. RUSS HERMAN: You're quite welcome.

Q Now, what -- There are various documents, for example, for Ronnell corporation, the documents marked 1983, 1984 correspondence. There is a 1985 tax return for Ronnell, a tax return for '86, '87, '88, '89. There are some correspondence, Ronnell correspondence, in 1990 and various documents on the letterhead of Ronnell Company, Inc., in 1993.

Does that comport with your recollection?

A Yes, it does.

Q Now, is it fair to say that from 1976 through the present date Ronnell has continued in business, and that Ronny Tamol 6 are some of the evidences of the business that Ronnell conducted during that period of time?

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A I'm not sure if you can say continuing in the business, because up until I retired, I really could not deduct any of the expenses from Ronnell for income tax purposes. They were investigations on my part under that business name.

Q And expenditures?

A And expenditures.

Q And correspondence?

A And correspondence.

Q And notes that you made regarding Ronnell?

A That's correct.

Q And tax returns that you filed for Ronnell?

A That's correct.

Q So it's fair to say that Ronnell was in existence and continued in existence and operated in some fashion from 1976 to the present date; is that correct?

A Yes, it has.

Q It was never liquidated; is that correct?

A That's correct.

Q Never went out of business formally or informally; is that correct?

A That's correct.

MR. DELACROIX: Are you finished with those documents, Mr. Herman? If you are, could we go

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off the record for a moment.

(Off the record.)

Q Now that we're back on the record, you had mentioned or we had discussed or -- at some point the F.A.C.T., F-A-C-T, system. It had something to do with air ventilation?

A Filtered air control technology.

Q This was technology which you had worked on while you were at Philip Morris?

A That's correct.

Q You also have worked on it -- this type of technology you have worked on since leaving Philip Morris?

A Yes, I have.

Q I want to show you RAT Exhibit 7. It's a videotape. We'll play it for you. I won't interrupt the tape. I have given counsel for Philip Morris, I believe, a copy of the tape.

What we'll do is, we'll -- I won't ask you any questions about it while the tape is running, but then after it is run, I will ask if you can identify it for us.

I believe that it relates to the F.A.C.T.

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system that you were working on while you were at Philip Morris.

MR. GAY: I don't know that that is permitted under the rules.

MR. DELACROIX: I think he needs to look at it and identify it first before we --

MR. RUSS HERMAN: It's going to be all right with me. These other lawyers will have to order their own copies of the videotape. The only reason that I wanted to put it on here is I thought it would save some expense. I don't care.

MR. DELACROIX: I don't have any problem of having duplicate copies made for the other defense counsel. I think this would be inappropriate.

MR. RUSS HERMAN: I don't have a problem with -- Let's continue to be on the record. Let's keep the camera --

Have you got the camera focused on Mr. Tamol?

THE VIDEOGRAPHER: Yes.

MR. RUSS HERMAN: Let's keep the camera Mr. Tamol, and let's play the videotape.

And, Mr. Tamol, if you would watch th

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videotape. After it is played, I will have some questions to ask you about it. The videotape has been unedited since it came into our possession.

To the extent there may be audio on the videotape, I will ask the court reporter to report it as she may best do.

(The following is a transcription of the audio of the videotape.)

THE NARRATOR: Clean air is no longer strictly an outdoor issue. It is motivated by a growing concern over the potential threat of litigation.

Building owners, designers, and contractors are mindful of the need to provide clean fresh air in the host of indoor environments for office workers, theatre patrons, shopping mall customers, and restaurant diners.

At the newly-constructed lounge in Pittsburgh's historic Benedum Center for the Performing Arts, patrons not only enjoy the attractive surroundings, they are surrounded by something that can't be seen: good indoor air

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quality.

That's because the room is served by a displacement heating ventilation and air-conditioning system that makes innovative use of existing technology to thoroughly clean the air.

Particulates and gases are removed more effectively than in traditionally ventilated completely mixed rooms.

MR. HEYWARD: When you have a cold, that means that your cold germs are distributed uniformly around the room. If you're smoking a cigarette, your smoke is distributed uniformly around the room.

What we found was that we could greatly improve this if we changed the manner in which the room is ventilated. By that I mean, if we use an upflow room, which sometimes is referred to as displacement ventilation.

(End of Mr. Heyward.)

THE NARRATOR: The displacement concept works by introducing clean and fresh air through a subfloor plenum spreading the air flow evenly

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across the entire floor and exhausting it through the ceiling.

Duct F.A.C.T. or filtered air control technology, its effectiveness was proven during a two-year study at Philip Morris USA's research and development center in Richmond, Virginia.

The effectiveness of the F.A.C.T. system was tested for one of the most visible symptoms of poor ventilation, tobacco smoke. F.A.C.T. was tested in a specially constructed 14 x 14 foot room.

Because tobacco smoke is such a good indicator of the effectiveness of ventilation, researchers created conditions equivalent to all patrons smoking continuously.

Here light bulbs were used to simulate body heat, and cigarettes were lit to create smoke equivalent to that created by a comparable crowd in the Benedum lounge.

The atmosphere was tested for three by-products of tobacco combustion: nicotine, ammonia, and particulate matter.

This graphic compares the actual test results from the room with the system operating compared to OSHA maximum limits for the three

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by-products. In all cases, the readings are well below the OSHA standards.

To illustrate how quickly air in the room is replaced by system, blowers were shut off and the room filled with tobacco smoke. The particulates are visible as they pass through crossed laser beams.

When blowers are turned on, tobacco smoke rises toward the ceiling and is captured by the exhaust system. In four minutes all tobacco smoke has been removed and the air in the room completely replaced.

In another demonstration, water is poured on dry ice on the test room floor creating a CO2 cloud. In less than two minutes, the cloud has been forced from the floor to the ceiling and exhausted from the room.

Although while this is a different approach to air-handling and cleaning, it uses conventional proven mechanical components.

MR. APPLE: There is nothing unique to the air-handling equipment. All the ductwork design, the fabrication of the sheet metal is all standard conventional work. The flooring systems are standard available flooring systems.

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(End of Mr. Apple.)

THE NARRATOR: The installation at the Benedum shows exactly how the F.A.C.T. system works. Ducts installed on top of the floor provide the upflow. Ductwork across the ceiling is vented for exhaust.

Half of the air is vented to the outside. The remaining internal air is carried to an electronic air cleaner and the carbon filtration unit.

The electronic air cleaner will stop particulates as small as .01 micron. This includes elements such as bacteria, fungi, mold, and other airborne contaminants as well as tobacco particulates.

The carbon filtration unit removes basic compounds such as nicotine and ammonia. The flooring placed over the ductwork is the same as that used in computer rooms.

Carpeting is necessary for cosmetic purposes, but standard carpeting won't work because it blocks air flow. Jay's Carpet Company provides the solution.

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MR. TAMOL: What we did do, rather than put down the full carbon latex backing, we backed off and, in effect, left the holes that were in there originally and just rebound fibers together.

So the pressure drop they had across there was excellent and the appearance was excellent.

(End of Mr. Tamol.)

THE NARRATOR: The pressure drop caused by resistance of the carpet is 1/40th of an inch of water. The carpet is a standard commercial grade and can be molded in any color or pattern. Also porous backing does not affect the wear of the carpet.

To avoid the sensation of cold on feet and legs, suppliers were kept at 68 degrees Fahrenheit instead of the usual 55 degrees or a ceiling supply.

Because air is diffused across the entire floor, the velocity is less than 1/10th of that of air introduced through conventional ceiling systems.

The upward air flow can't be felt by those

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standing on the floor. But a sheet of paper placed on the carpet will float freely across the surface.

Once this installation of the F.A.C.T. system was completed in the Benedum lounge, technicians from an independent testing and consulting firm were asked by the theater's manager to perform tests to ensure the system worked properly.

To compare air quality and established baselines, readings were taken inside and outside the building and in the empty lounge.

A second level of baseline readings was established by having invited guests in the lounge for 30 minutes without smoking. Monitoring continued as guests began to smoke.

The results show air flow is even across the surface. Levels of nicotine, ammonia, and particulates are well below OSHA standards.

The Benedum installation demonstrates the benefits of using the upflow system in the hospitality industry, but there are other applications.

The F.A.C.T. system can be used to help mitigate the systems and effects of sick

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building syndrome. As liability for indoor air quality becomes a growing issue, architects, construction firms, engineers, building owners and their insurance carriers should recognize how HVAC F.A.C.T. systems can improve indoor air quality and, consequently, reduce the potential threat of litigation.

To further help mitigate sick building syndrome, the system must be thoroughly cleaned and maintained according to manufacturer's schedules.

There are practical advantages when the system is installed in work spaces. Partitions can be relocated in open offices without regard to the location of ventilation ducts, because air flows up out of the floor uniformly and is exhausted evenly across the ceiling.

Electrical, telephone, or coaxial cable can be relocated quickly and at less cost because of the open floor plenum.

Articles in a variety of trade publications about the F.A.C.T. system developed by Philip Morris' engineers are already creating interest from architects, designers, contractors, and building owners.

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According to some in the trade press, F.A.C.T.'s displacement flow technology is an interesting solution to indoor air quality problems as well as an improvement over traditional HVAC systems.

Installation of the upflow system has a variety of benefits: cleaner air, decreased risk of potential litigation, mitigation of sick building syndrome symptoms, and flexibility of work spaces without sacrificing indoor air quality.

MR. BURNLEY: We're encouraging the industry to look beyond traditional systems to find solutions that provide clean indoor air without unnecessary restrictions.

We believe the HVAC industry can build on what we have done. That's why we're willing to share what we have learned.

(End of Mr. Burnley.)

THE NARRATOR: Philip Morris is ready to answer your questions about the forced air control technology developed at our research and development center and the installation at the

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Benedum Center. Call the F.A.C.T. line at 1-800-767-FACT.

This video is made to share some new concepts for room and building ventilation. There is no rocket science involved. In fact, the concepts are quite easily understood.

Before launching into the new ventilation systems, it is important to understand a little about how ventilation systems, like the one in this conference room, are currently designed and what are some of the limitations of this traditional system.

A typical ventilation system supplies inlet air from the ceiling. Also, the air is exhausted from the ceiling. As you see, supply air enters at the ceiling and is exhausted at the ceiling.

This is typical of a traditional ventilation design. This style of ventilation has been practiced for a long time.

The easiest way to understand how ventilation systems are designed today is with a simple block diagram like the one shown.

Let's start on the right side and follow the supply air path. Conditioned air is

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introduced into a room through supply air diffusers, which are usually fed from ductwork in a false ceiling. Diffusers are designed for relatively high air velocity so that the supply air mixes with the room air.

If perfectly designed, the temperature in all parts of the room will be identical. Usually, the room air is also exhausted through return grills in the ceiling, because there is a false ceiling and it's cost effective.

Now, let's follow the return path on the left and bottom of the diagram. Part of the return air from the room is exhausted from the building, and fresh outside air is mixed with a portion that was not exhausted.

Depending upon the location of the building and the quality of the outside air at the intake of the building, the makeup air may not be very fresh.

If the air intake or an airport ventilation system is near the aircraft area, you should not expect very pristine fresh air makeup.

This type of ventilation design has been around for a long time and has served us pretty well. Some things have changed, though,

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primarily the high cost of energy and our awareness of environmental issues.

Engineers and building operators have had an easy answer for energy efficiency: just close the makeup air damper. Unfortunately, this compromises the indoor air quality, since contaminants which are generated in the building have no way out. They simply build up. This is one of the causes of sick buildings.

So we really have two competing issues: energy and environmental concerns. We need solutions which address both.

Traditional ventilation systems have three important limitations. First, a totally mixed room means that any annoying substance generated anywhere in the room will be fully dispersed and affect everyone in the room.

If someone has a cold, some of his or her cold germs will reach everyone in the room, because the ventilation system is designed to mix all the air in the room.

Second, since the energy crisis of the mid-'70s, building designers and operators have reduced the amount of fresh air makeup to save energy.

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This saves the cost of conditioning outside air, which is usually too hot or too cold to be used directly. Without adequate makeup air, all sorts of contaminants begin to build up in the building.

Without a treatment process on the recirculated air, small particulate material, things like pollen, bacteria, fungi, mold, tobacco smoke, and skin particles, and gas phase compounds are not removed from the conditioned air, which is returned to the room.

We would like to offer an alternative to the traditional ventilation system design by describing a program that we have been involved with to develop technology to support ventilation systems which would permit smoking, yet be comfortable for both smokers and nonsmokers.

A lounge area is the project described. The lounge area will be relatively small, about 660 square feet of occupiable space. The maximum room occupancy was estimated to be 100.

For the purpose of our development program, the worse case would be when everyone was smoking, probably the highest smoking level

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obtainable anywhere.

Analysis of the system indicated that a conventional mixed ventilation system would be inadequate. A displacement type of ventilation system instead of the totally mixed room type system was obviously preferred.

In this approach, air flows upward past the occupants of the room without mixing. An infiltration system was developed to remove fine particulate material and certain gaseous compounds in the recycled air. Inadequate fresh air makeup was used.

In order to evaluate the effectiveness of alternative ventilation systems, we built a very flexible simulation facility which is one-third scale of the actual lounge.

Our first job was to pick something to bound in cigarette smoke which would be good tracers to measure the system's effectiveness. Fine particulate matter and nicotine were chosen as tracers.

Later you will see how well our displacement system performed compared to traditional mixed room designs. Again, the best way to explain the displacement design concept

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that we used for the lounge is with a simple block flow diagram.

Let's start with a supply air to the room on the right side of the diagram. Supply air is introduced to the room through a supply air plenum under the floor, a false floor as opposed to a false ceiling.

The air actually flows up through the carpet and into the room. There is no mixing of the air in various parts of the room, except what is caused by people moving about in the room.

The air flows vertically upward at low velocity. The vertically upward (inaudible) pattern consisted with the tendency of heat to rise, heat which is generated by the people in the room and by the tendency of cigarette smoke to rise.

Since there is very little mixing in the room horizontally, cigarette smoke, for example, will rise and not bother anyone.

Since clear air flow is from the floor toward the ceiling and since smoke rises naturally and is assisted by the displacement ventilation system, everyone will be quite

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comfortable.

Incidentally, our testing has shown this ventilation system to be extraordinarily comfortable. There are absolutely no drafts, since the air is distributed through the floor at a low velocity.

Air is collected at the ceiling and exhausted through return air grills. Part of the return air is exhausted from the building. The remaining air is clean before being mixed with fresh air.

We are using electrostatic precipitators to remove the fine particulate matter found in tobacco smoke, which also removes things like bacteria, mold, and fungi, and a specially-designed acid treated carbon filter to remove nicotine and other gaseous compounds.

Next, makeup air is mixed with a clean return air. It is reconditioned and supplied back to the room.

The smoking lounge is under construction, so the actual results for it are not available. However, the result obtained in our test facility under the simulated extreme smoking conditions are shown compared to those

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calculated for a traditional mixed lounge.

Measurements made in the breathing zone of the test facility showed a tenfold reduction in particulate and nicotine compared with the perfectly mixed room ventilation system. That is a substantial reduction in environmental tobacco smoke in the breathing zone. It's comfortable to both smokers and nonsmokers.

This smoking lounge is an extreme case, but the techniques developed here have wide application for use in commercial buildings, whether or not smoking is permitted.

Office areas, especially open office plans, conference rooms, airport smoking lounges, auditoriums and restaurants, are all potential applications for this technology.

To show exactly what happens in the lounge when it is being used, as you can see, the paper on the floor moves around easily because the air is flowing uniformly up through the carpet. The air velocity is low and very comfortable. In fact, you are unaware that any air is flowing in the room.

The air flows vertically upward through the room and is exhausted through the ceiling. The

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smoke fumes from a cigarette does not mix until it approaches the ceiling exhaust.

Incidentally, the light stand shown simulates body heat. When smoking at the maximum density, everyone is comfortable.

To enhance the visualization of the smoke, you see an ashtray stand where several cigarettes are being smoked. The smoke fume is rising well above the occupants, not creating irritation.

Even under these various high smoking levels, the conditions in the room are comfortable.

Another advantage, as described previously, it is that the air treatment system should reduce the concentration of fresh air particulates, such as mold, pollen, and so forth, since half of the air is recycled through the treatment system where the airborne contaminants in the fresh air are removed.

Upflow ventilation is equally applicable to office areas. To illustrate the isolation from adjacent cubicles, two cubicle spaces were assembled within the test facility.

Multiple cigarettes are smoking near the

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tape?

MR. RUSS HERMAN: Excuse me?

MR. ALLEN: Did I hear you earlier say you were going to produce the tape, Counsel?

MR. RUSS HERMAN: You have a complete copy of it. Let's stop it. Let's put it on rewind, and I'll ask some questions.

The videotape deposition will be offered as an exhibit as Ronny Tamol 7. The Court can have it transcribed or watch the videotape.

Q Mr. Tamol, have you every seen the F.A.C.T. Philip Morris videotape that you were just shown on RAT Exhibit 7?

A Yes, I have.

Q After that portion of RAT-7, there was another videotape presentation. Have you seen that before?

A Yes, I have.

Q That had to do with the same ventilation system, did it not?

A That's correct.

Q Then following that there was a shot of you in May of '90 hitting golf balls or something; correct?

A I'm not sure. That was me.

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utilities such as telephone, computer, power and so forth can be easily rerouted.

Again, for visualization, many more cigarettes are being smoked than would be in actual office areas. Even so, the room air quality is excellent.

This approach would add a great deal of flexibility for office building rearrangement in addition to improving the air quality.

Okay, we have got action now. Just keep whacking. I will be right with you.

MR. RUSS HERMAN: If we can stop the videotape with the consent of everybody at this point, unless you want to watch the remainder of the tape, which I believe has Mr. Tamol and possibly another person hitting golf balls on May 1, 1990.

If you want to play it all the way through, we will. If you want to stop it here, I'm not going to ask Mr. Tamol any questions about his golf game. It's up to you folks.

Counsel?

MR. ALLEN: Stop it.

MR. RUSS HERMAN: Let's --

MR. ALLEN: You're going to produce the

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side wall of one cubicle, and as can easily be seen, the smoke does not move over the side wall from the adjacent cubicle but rather rises toward the ceiling.

When displacing type ventilation is used in an office environment, the cubicle walls act as baffles, essentially eliminating the ventilation air crossing from one office to the next.

Thus, smoking in one office will be comfortable and will not result in any discomfort in the next.

As in the lounge simulation, the air flows upwards through the cubicle, removing the contaminants, including ETS, from the entire area.

Utilizing this ventilation system greatly improved the air quality when compared to a conventional ceiling supply system.

Also, the air flow is not perceived by the occupants. Conventional ventilation blowing down on cubicles would tend to concentrate all contaminants within the cubicle.

An added advantage of through-the-floor ventilation is that cubicles can be rearranged without any concerns for ventilation. Also,

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Q That was you?
A I hope I get the swing back from that year.
Q When did you come into possession of the F.A.C.T. tape?
A The first tape was a tape that Philip Morris made and advertised to be distributed throughout the country in technical journals. So I believe that I came into possession of that tape maybe at the Benedum Center opening where it was shown or somewhere along the line, and a copy was given to me.
Q Approximately when was that?
A About the time the Benedum Center opened.
Q When was that?
A I'm not exactly sure.
Q Was it before --
A It was before I retired, probably a year and a half or two before retirement.
Q So before you retired from Philip Morris in 1992, you had your copy of F.A.C.T., F-A-C-T, presentation we see on this videotape?
A That's right.
Q The second portion of that tape that also relates to the ventilation system, did you come into possession of your copy before you retired from Philip Morris?

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A Yes, I did.

Q Evidently, you put some of your golfing lesson on the same videotape?

A No, I did not.

Q You don't know how those things came together?

A No. The golfing tape is a separate tape. Someone manipulated it.

Q Can you tell me who or when?

A No idea.

Q The two tapes that don't relate to golfing, where did you keep those?

A I kept them in my office, I believe, at Shady Crest, and then they were part of my office area in -- or at least at Hatsy's home.

Q So you kept RAT Exhibit 7, insofar as it relates to the Philip Morris ventilating systems, you kept that tape in your office at home and then moved it to Hatsy Heep's residence in Hanover at some point?

A That is not one tape. There are two tapes. There are three tapes shown. There are three separate and distinct tapes. I never had these combined.

So that the first two tapes I kept in the residence and also the third tape was there as my personal memorabilia.

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Q So if RAT-7 constitutes three separate videotapes --

A That's correct.

Q -- those videotapes were made sometime before you left Philip Morris in 1992?

A Yes, they were.

Q The Philip Morris videos you took with you when you left Philip Morris?

A Yes, I did.

Q They ended up in Hatsy Heep's residence; correct?

A That's right.

Q They were in your possession from the time that you left Philip Morris to the time they ended up at Hatsy Heep's residence?

A Yes, they were.

Q Sir, Ms. Heep says in her statement at page 17 and page 25 and in her testimony to Philip Morris' lawyers, Volume 6, page 248 to 255, that you gave testimony to the Occupational Safety and Health Administration of the United States government, or OSHA. Did you do so?

A Yes, I did.

Q You did so in 1994; is that correct?

A I believe it was November of '94.

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Q You appeared there in your capacity as a representative of Ronnell, Inc.?

A That's correct.

Q This was two years after you left Philip Morris?

A That's correct.

Q Where were you living at the time?

A I believe Shady Crest Lane.

Q Was this a committee of the government you testified before?

A Yes, it was.

MR. ALLEN: Objection, whether he knows the precise --

Q Where was this testimony given, in what location?

A In Washington, D. C.

Q Ms. Heep said that you lied to OSHA in that testimony. Isn't it true you did lie to OSHA in that testimony?

MR. ALLEN: Objection, objection. Judge Magistrate Chasez's orders quite specifically said Mr. Tamol may be questioned as to whether he made a statement attributed to him by Ms. Heep but not whether the statement was substantively true.

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MR. RUSS HERMAN: Counsel, I'm just going to read 4 and 5 into the record of RAT Exhibit 1 verbatim.

"The deponents may be questioned on whether, and under what circumstances, a statement attributed to them by Ms. Heep was in fact made."

I believe that this is a fair question under the judge's ruling. You can instruct the witness not to answer if you want to.

MR. ALLEN: I would have to agree to disagree whether it's a fair question under the ruling.

MR. RUSS HERMAN: Are you instructing him not to answer?

MR. ALLEN: I am instructing him not to answer.

MR. DELACROIX: Let me join in the objection, Mr. Herman. I will read to you page 29 of Magistrate Judge Chasez's transcript of the May 23rd hearing --

MR. ALLEN: 28 through 30 are the pages that are relevant.

MR. DELACROIX: -- where she specifically says, I'm quoting the Court, "I think if Hatsy

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Heep testified to something that is alleged to have been told to her by Mr. Tamol, then Mr. Tamol can be asked: 'Did you have this conversation with Ms. Heep? Did you say this? Do you deny this, or do you admit this, or do you have another version of this conversation?'

"Whether it's true, whether the substance of what Hatsy Heep says is accurate or not, isn't the issue. The issue is whether or not he agrees with what she -- with the fact that she says it was said."

That's on page 29 of the transcript of the hearing held before Judge Chasez on May 23rd.

I think, Mr. Herman, under the Rule 40D, it is appropriate, where there is a specific court order limiting the scope of the deposition, that a witness can be instructed on not to answer.

I'm not instructing Mr. Tamol not to answer. I'm objecting for the record and advising counsel that I think it's improper to ask this question of this witness.

Q Sir, isn't it true you lied to OSHA in your testimony on November 22, 1994?

MR. ALLEN: Objection. Again, I'm instructing the witness not to answer. I will

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adopt Mr. Delacroix's remarks, in that I have exactly the same page underlined in the document before me and was prepared to read the same to you.

Q Sir, isn't it true that you, in fact, told Ms. Heep that you had lied to OSHA in those hearings of November 22, 1994?

MR. ALLEN: Answer that.

A No, I never said that.

(Off the record.)

Q Sir, isn't it true that you lied to OSHA during the hearings when you stated that Ronnell corporation had only been formed two years before November 22, 1994?

MR. ALLEN: Objection. Same objection and the same arguments that I have given before. I instruct the witness not to answer.

Q Sir, isn't it true that you lied to OSHA on November 22, 1994, when you indicated specifically that you did not have any videos such as the F.A.C.T. video evidenced in RAT-7?

MR. ALLEN: Objection. Instruct the witness not to answer.

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Q Sir, isn't it true that you lied at the OSHA hearing of November 22, 1994, when you were specifically asked whether there were any measurements taken of a particulate matter, for example, and you said that there was no videotape of any measurements taken?

MR. ALLEN: Same objection. Instruct the witness not to answer.

MR. DELACROIX: Before you move on, Mr. Herman, let me just state an objection for Philip Morris.

I think the record will leave an improper inference that these questions are not being answered, when, in fact, the objections are being made because the questions are outside the proper scope of this deposition.

I think it would be appropriate at this time to move that your questions to which there have been timely objections regarding violating the scope of Judge Chasez's orders should be stricken, and we would move to strike those questions.

MR. RUSS HERMAN: To which we take exception. We will argue about that and brief it at some other time.

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Q At page 7241 of the OSHA hearing of November 22, 1994, with regard to Ronnell, do you recall saying "No, I'm an engineering firm. I'm the president. I formed the company two years ago, particularly to put emphasis on development engineering and indoor air quality engineering"?

MR. ALLEN: Objection.

Q "Ronnell Company, it's a consulting engineering firm in Richmond, Virginia"?

MR. ALLEN: Objection to the question. Judge Chasez's order permits the deponent to be questioned about whether and under what circumstances statements attributed to him by Ms. Heep were made.

The question now posed does not relate to a statement attributed to him by Ms. Heep. Therefore, it exceeds the restrictions specified by Judge Chasez. And for that reason, the witness is instructed not to answer.

MR. RUSS HERMAN: I will only respond once, and that is that Ms. Heep said and was questioned at length in her deposition about Mr. Tamol telling her that he specifically lied to OSHA in hearings, and these questions do relate to those lies and Ms. Heep's accusation.

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I just want to state that once on the record. I'm not going to belabor it.

MR. ALLEN: I won't either. But, again on the record, at pages 28 through 30 of the transcript of the hearing or conference that took place in her chambers on May 23, 1996, the judge expounds at some length on her ruling in this regard.

Mr. Delacroix quoted the most precisely relevant language already, which appears on lines 6 through 15 on page 29 of the transcript.

Based on the Court's ruling, we impose the objection, and it's for that reason we instruct the witness not to answer the question.

MR. RUSS HERMAN: Well, in connection with the deposition of this witness, I'm going to offer and introduce into evidence of this deposition RAT-8, United States Department of Labor, Occupational Safety and Health Administration, Public Hearing, Proposed Standard for Indoor Air Quality, pages 7231 through 7477, Washington, D. C., November 22, 1994, as certified by Bayley Reporting, Inc. I'll provide Mr. Tamol with a copy of it.

At any time that you wish to answer those

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questions about whether you lied to OSHA or whether Ms. -- or reconsider that testimony, please let me know.

MS. BERTAUT: I will note an objection to that.

MR. ALLEN: I will join in the same objection. It is outside the scope of the judge's order as reflected in the previous objections to the specific questions related to the transcript.

Q Ms. Heep, in her statement and then questioned at length by Philip Morris on volume 4, at pages 13, 32, 33, and 59, stated that on March 27, 1996, you yelled, cursed, and hit her and choked her. Did you yell at her?

MR. ALLEN: Objection. Again, Mr. Herman, I think the judge is clear that the witness may be asked whether he made a statement that is attributed to him by Ms. Heep. Your inquiry does not relate to a statement attributed to him by Ms. Heep.

MR. RUSS HERMAN: You're instructing him not to answer?

MR. ALLEN: I'm instructing him not to answer.

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Q Did you curse Ms. Heep, use any curse words?

MR. ALLEN: I will allow that. That's perhaps a statement.

A No, I did not.

Q Ms. Heep said you hit her. Did you hit her?

MR. ALLEN: Same objection. I'm going to ask the witness not to answer the question. I'm going to state that objection but permit him to answer that question.

A No, I did not.

Q Did you choke her?

MR. ALLEN: Same objection for the record, but the witness is permitted to answer.

A No, I did not.

Q Did you push her?

MR. ALLEN: Same objection, but the witness is permitted to answer.

A No, I did not.

Q Ms. Heep says in her deposition under interrogation by Philip Morris in volume 4 at page 35 that you said, "You're just like my wife," referring to your first wife Elinor Tamol. Did you ever tell her that, Ms. Heep that?

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MR. ALLEN: I will permit the witness to answer that question, but I will state an objection for the record.

Because, as I understand the Court's ruling, he may be questioned about statements attributed to him by Ms. Heep which relate to the Tamol documents or document destruction, which is the central issue that brings us together for this deposition today. That inquiry is not relevant to the germane issue.

You may answer the question.

MR. COPLEY: Also object to form.

A No, I don't remember saying anything "just like my wife." I don't know how she is just like my wife. They are very different people.

Q Well, in Ms. Heep's statement at page 35 and in her statement at page 41, she says that you were angry and ranted and raved at her. Were you angry and did you rant and rave at her?

MR. ALLEN: Object as to the portion of the question which you inquire whether he was angry. The portion whether he ranted and raved might relate to that statement. I will let him answer that.

A What is the question again, two part?

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Q Yes.

MR. ALLEN: Did you rant and rave?

A No, I didn't rant and rave.

Q In her deposition volume 2 at pages 19 and 20, she indicated that you were angry with her when you yelled at her. Did you yell at her?

A This is on the 27th?

Q Yes.

A The 27th?

Q Yes, sir.

A Yes, I was angry with her. I asked her in a very, very loud voice is she going to pay me -- ever going to pay me the money she owed me. She said no.

Q Sir, didn't your -- You never said to Hatsy Heep "You're just like my first wife" or words to that effect?

MR. ALLEN: Objection, asked and answered. He already said he did not say that to her.

Q Your answer is no, you never said that, sir?

MR. ALLEN: That was his answer, Mr. Herman.

Q Sir, in your --

MR. ALLEN: Again, I also object to that on the grounds of relevance, because it has nothing

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to do with the issues that are permitted to be inquired into in these depositions.

Q Sir, in your sworn testimony in case number HA4212 in the Circuit Court of the City of Richmond identified as RAT Exhibit 10, didn't your wife Elinor Tamol indicate that you yelled, cursed, and hit her?

MR. ALLEN: I'm going to object and instruct the witness not to answer. This is way beyond the permissible areas of inquiry that Judge Chasez's order allows.

It is not a question regarding the statement attributed to him by Ms. Heep, nor is it relevant to any of the issues that are permitted to be inquired into in this deposition.

Q Didn't you --

MR. ALLEN: I'm going to instruct the witness not to answer that question.

MR. RUSS HERMAN: Yes, sir.

Q Did, Mr. Tamol, in that -- in your testimony in the hearing on April 2, 1991, your sworn testimony, when asked whether you had lied in request for admissions, take the Fifth Amendment?

MR. ALLEN: Same objection.

MR. RUSS HERMAN: Instructing him not to

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answer?

MR. ALLEN: Instructing him not to answer.

MR. RUSS HERMAN: Sir, in connection with your instructions given you're not to answer, we're going to offer and introduce into evidence the hearing identified as RAT Exhibit 10.

MR. ALLEN: I'm going to object to the introduction into evidence of that exhibit on the grounds that it is irrelevant and outside the scope of what is permitted under the judge's instruction.

MR. RUSS HERMAN: We will meet that objection at the appropriate time.

And this exhibit is also offered under the rule which allows impeachment information to be offered in evidence, the witness having previously testified today that he has never asserted the Fifth Amendment. And I believe that RAT Exhibit 10 will show otherwise.

MR. GAY: What was your page reference on that?

MR. RUSS HERMAN: I didn't give you a page reference.

MR. GAY: Do you have one?

MR. RUSS HERMAN: I certainly do, but I'm

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not at this point going to belabor asking these questions to which the witness has been told not to answer counsel.

I will be happy to tell you off the record when we break so you can search it out in the event you would like to give some cross-examination or direct yourself.

MR. COPLEY: Join Mr. Allen's objection.

Q Now, while you were employed by Philip Morris, did you receive or generate within Philip Morris documents relating to nicotine in tobacco, tar and -- Strike that.

While you were employed in the research and development at Philip Morris in Richmond, Virginia, beginning in 1963, did you either receive or generate internally within Philip Morris documents that reflected the word "nicotine" and "tar" as used in tobacco products?

MR. ALLEN: Objection. I have before me the minute entry from -- or order entered May 24, '96, by Judge Chasez, and it permits the deponent to be questioned regarding "The extent, location, removal, secretion or destruction in whole or in part of the Tamol documents."

The question that has been put to Mr. Tamol

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asking -- regarding the content of the documents, whether he received them, whether he generated them, I think that is outside the scope of permissible area of inquiry as reflected in Judge Chasez's order.

If the questioner wishes to present a document to Mr. Tamol and ask him from whom it was received, that would perhaps be permissible under the chain of custody portion of Judge Chasez's orders.

But insofar as the question goes beyond that, I think it's impermissible, and I object on that basis.

MR. RUSS HERMAN: Are you instructing the witness not to answer?

MR. ALLEN: I am to the question as posed. If you wish to rephrase the question regarding -- and confine it to the permissible areas of inquiry regarding chain of custody, I'll withdraw the objection.

MR. RUSS HERMAN: It's a proper question. It's a predicate question. We'll just go through these documents one at a time that reflect nicotine, and he will tell us all about them, whether he wrote them or didn't write them

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or when they were made.

MR. COPLEY: Also object to form.

Q Sir, I'm going to show you a series of documents, which I will identify individually by Bates numbers as you're going through them, as RAT-11. The documents bear the Bates stamp 2891, 2885, 2886, 2887, 2888, 2889, 2880, 2881, 2881, 2882, 2884, 2869, 2870, 2871, 2872, 2873, 2893, 2878, 2879, 2866, -67, -68, 6849, 2848, 2736, 2737 to 2752, 24274 to 2606 -- Strike that. -- 24274, 2606, 2607, 2608, 2609, 2610, 2602, 24277, 24282, 24275, 24276, 3803, 2073, 2704, 12981, 6144 -- Strike that. -- 6141 through 6291, 2459 through 2462, 5751, 4124, 2819, 2080, 2801, 2082, 2083, 2084, 2085, 2381, 2400, 2464, 2465, 2507, 2526, 2766, 2767, 2768, 2769, 2796, 2797, 2855, 2904, 9488 --

MR. ALLEN: You skipped one. Did you intend to skip 2854?

Q No, I didn't. 2854, 2855, 2904, 9488, 24278, 24279, 24280, 24281, 24272, 24273.

Those numbers that I have just read represent the numbers of the Bates documents which we received from Hatsy Heep's basement constituting RAT Exhibit 11.

MR. RUSS HERMAN: I'm going to pass an

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extra copy of this down so counsel at the other end can have an opportunity to look through these as we go through them.

Q I would like you first to look at the part of RAT Exhibit 11 stapled together, 2881, 2885, 2886, 2887, 2888, 2889. Would you like an opportunity to take a look at those?

MS. BRAUN: How do you characterize 2881?

MR. RUSS HERMAN: I tried to offer a predicate, but it was objected to.

Q Sir, are documents 2891, 2885, 2886, 2887, 2888 and 2889 in your handwriting?

A Yes, they are.

Q Do they bear your engineering stamp at the top of each page?

A It's just a date stamp with my name on it. Yes, that is mine.

Q Were these notes or handwritings made by you while you were employed at Philip Morris in Richmond?

A Yes, they were.

Q Were they made by you while you were employed at Philip Morris in Richmond in the research and development area?

A Yes, they were.

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Q Would you, please, beginning with the first written word at the top, read the first document.

MR. ALLEN: Let me -- Just as a point of inquiry, do you intend to have the witness read every word on every document? I know if there are words that are unintelligible that are handwritten, it is certainly appropriate for you to ask him.

MR. RUSS HERMAN: The answer is no, I don't intend to do that, unless I get some objection that requires me to do that. On this document I'm asking that the witness read the words.

MR. ALLEN: I'm going to permit him to answer the question because I think it's certainly appropriate for him to clarify illegible handwritten notation so that you can read the document.

I want to make it clear that my understanding is that's the extent to which he can be asked about it.

A It says "Long filter cigarette." Continue?

Q Yes.

A It says "All facts-differences. "Technical" -- I believe that word is probably "advantages."

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Then "(1) Can vary filter RTD. Flexibility in TPM-RTD," and I guess that's "relationship," would be my guess. "50 millimeter butt RTD - 2.0. 35 millimeter filter - 1.8 to 2.5. Lower than Marlboro total draw cigarette (3.8 to 4.7.)

"(2) Can vary same or TPM delivery to higher than Marlboro level." I believe that's what it says.

"Puff count - may be same as Marlboro - not demonstrated. 9 versus 10" -- I can't make that out -- "Marlboro," I can't make that out, "plus step - blend cigarette" -- "blend" may be "cigarette."

"Economics - savings, filter material replacing tobacco."

Q Now would you go to the next page, 2885, and read for me.

A "June 1964, 2100" underlined, "Problems with hand assembly of 3 component filter. Short range program to produce a multifilter Paxton. Good polyox - carbon - remove HCN. Prefer control over series 'T.'" It looks like "fine mesh carbon. What is IR smoke index? Review menthol on Paxton. Alternatives mentioned.

"1402," to the side says "TPM and nicotine. No effect in mucous flow. Licithin, encapsulated

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menthol.

"0706, what about lactones?"

Next page?

Q Yes, sir.

A "July, 2100. That would be Parliament" over "preferred series 'T.' Multifilter Paxton work underway. Series T length," I can't make that out. I can't make out the next word either. "What about large pore size silicon gel?

"1402, What about screened" -- I can't make that out. "Multifilter III. Flavored" -- I can't make that out "nitrate. Flavored screening."

Then "0706" slash.

"August, 2106, polyox - mucous flow effect? Triple filter work for" -- I'm not sure what that is -- "M3," must be multifilter. "Why carbon before series T?

"1402, Nitrate content of flavored cigarette? What is carbon taste? SEF flavor profiles.

"0706, What about first puffs? PH less - function of RTD? What value solanesol?

"September, 2100, 60/40 polyox - carbon blend. Multifilter Paxton - not good. Plug reversal.

"1402, What about nitrate? Multifilter

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III.

"0706, Does nicotine add flavor?

"October, 2100, Polyox carbon looked very good. Read letter on multifilter III.

"14" I think that's "02, Sidestream of TFP? Nicotine balance? Finished formula for" -- it must be "multifilter III.

"0706, potassium carbonate. Ammonia bicarbonate. Gas chromatographic profile - What do differences mean?"

Q The documents 2891, 2885, 2886, 2887, 2888 and 2889 that you just read from, how did this document get into Hatsy Heep's basement?

A I must have had it in one of my files.

Q Now, if you would turn to the next set of documents, 2880, 2881, 2882, 2883, 2884. At the top, the left-hand side, it has your stamp; correct?

A Correct.

Q The date, to the best that you can read it, is what?

A It says 1955. Something is wrong. It should be '65. Is that a 6? It's hard to say. It has to be '65.

Q January 12, '65, is that a fair reading of it?

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A I would say. Let's see the next page. Yes. It has to be a 6.

Q Now, would you read the words on that page, please.

A "Review of Thomson's project 1964 and Deszyck" and I believe that's "Cornell.

"January '64, project 2100. (1) Series T - cellulose acetate dual filter cigarette. Promised field" must be "test. Low tar. TPN? 17. Tar 7.8." I don't know that. I'm not sure of that word "method.

"(2) Extruded cellulose filter?

"(3) Carbon paper taste? 1402 Cornell.

"(B) Saratoga flavor formulations. 0706 Deszyck.

"(1) Subjective evaluation," I can't read that word. "What about lactones?"

Next page is "February, 2100, (1) Field test, Marlboro, Parliament.

"(2) Polyox for HCN.

"1402, (1) Effective nicotine on TFP smoke.

"(2) Saratoga's" - it might be "filler and filter plug. Added nicotine mallate to TFP. Treated charcoal granules. Ethyl maltol.

"0706, compound 180 - 2 parts per million

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in bright tobacco? Single lactones?" Stars as "cigarette paper smoke," underlined. "266 molecular weight lactones" underlined.

"March, 2106, (1) Series 'T' field test - supplier changed spec," underlined. Question mark, "Data correlation plots. Alpha cellulose filter material. Plugmaker, assembler." Star "Series C plus," I'm not sure of what that is, "on Parliament" slash, or dash, rather "found harsher.

"(2) Carbon filter. Synthetic gas removal of" it looks like "52. Nuchar." That should be probably "menthol and carbon - American Tobacco" I don't know "on what carbon?

"1402, (1) Lecithin as a sheet plasticizer. Mechanism of nicotine?

"(2)" I'm not sure what that first word is. It looks like "Filter results for Saratoga."

"07061, (1) Nicotine level in filters.

"(2) Special judges."

The next one is "April, 2200? (1) Loose overwrap problem.

"(2) Taryton looked at. Carbon filters" underlined "adding. Has paper and carbon taste been qualified.

"1402, UpJohn and Pfizer material." I

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don't know what this word is. "And ethyl maltol - Venezuelan Marlboro.

"0706, Bright tobacco extraction.

"May, 1402, Water soluble flavor for TFP.

"2100, Parliament with series 'T.' Low in tar. High in nicotine," and I believe that's "and phenol. Bypass? Still occurring. Multifilter III. What is status of triple filter machines?

"0706, potassium carbonate. Where does it stand. Flavor 2202-3-N. How large is 180?"

Q The series of documents, 2880, 2881, 2882, 2883, 2884, you have just read from, you made those notes while you were employed at Philip Morris?

A Yes, I did.

Q Part of your work?

A Yes, part of my work.

Q How did that end up with Hatsy Heep?

A It had to be in the file that I talked about earlier.

Q That you brought home with you?

A Yes.

Q Look at 2869 through 2873. At the top right-hand corner, there is your stamp, R. A. Tamol?

A Yes.

Q Would a fair reading of the date be January

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13, 1965?

A Yes, it would.

Q Under the words "Project outline," could you tell me what you see there.

A Well, "(1)" is "Purpose. Developed box development - to" something. I can't make that out. The other one above it, maybe that's "marketing." I can't make it out.

Another one below it is "production." Then to the side it's "domestic" and probably that is "international." I just can't make that out.

"(6) Technique. Problem." I don't know what I said in the first box. Second box is development, "DEV," I believe. The third box would be "product.

"(3) Brand components." It's "RTD" with arrows on either side. Off to the side I can't make out what that is. It looks like "filler" in the first block, "paper, side stream aroma." Next block would be "filter, flavor." I can't make out what that says to the right.

"(4) Presentation of proposal. Market research basis" -- I don't know what that says. I can't make it out. "Cost savings basis." It's "Pro" something. I can't make that out.

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I believe that's a "(5). Thoughts on future of PM brands for max profit.

"(A) Major flavor must come" -- I can't read that -- "or innovative change. Long tar. Crimped filler. Box won't do it alone.

"(B) Surgeon general report. Alternate (1) Ruling. Tobacco interest -- tobacco Congress" -- I can't read that word. "Enough.

"Star (2) Tar - nicotine numbers - only" something, it looks like "public, nose" maybe. Two bars, "Low TPM, nicotine, CO2 with this and flavor too will be sitting pretty.

"(C) Health cigarette. No such thing in the immediate future. Any discovery would have to be shared - prestige" underlined "only. Star, research must continue. They - caused by virus - persons. Due irritation of cells." That's what I can read of that.

Next page is "Program. Domestic international" maybe that is "emphasis, star. Low number cigarette" in the box to the right.

"(1) Series 'T' to Parliament." Across the page, "sidestream aroma (paper.) Filter tip configuration." I don't know what that is. "For series 'T.' Flavor ratio."

Then the other -- down the far right-hand,

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in this copy it's almost there, but I'm not sure what, that looks like "brand." It may be "crimp filter." I can't make that out exactly.

Back over to the left side. "(2) Polyox? (3) Multifilter flavor." And then at the end of that arrow, "Applications to all" -- I can't read that last word.

"Carbon taste?

"(1) Is it an imbalance in percent gas phase to TPM?" Is," then I have got dittos "in gas phase. Components?" Parenthesis, "Carbon taste."

I have a drawing diagram that says, "Dilution air. Gas phase. TPM. Delta P Delta P. Measure PH," underlined. "Keep at exit gas temperature. Threshold level? of TPM."

Over here to the left I have "One puff volume." Under it says, "2, gas phase, HCN, etc. 1, TPM, water, tar, nicotine." Under that "gas" -- sorry, "grams per puff" I read that as.

"One puff plus, air. 2" says "Gas. TPM. Dilution air in nitrogen and oxygen."

To the right "Advantage, (1) Low TPM. (2) Same flavor per puff.

"(A) Why does Carlton perforated cigarette have no flavor? What affect concentration on mucous

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flow?"

Next page has a graph that says, "Percent" -- I can't make that out. In the axis it has "Ratio - TPM to gas phase," and shows results in a curve. There is some curve ratio, curve going upward. "Ratio 1 to 5 - 3 is Marlboro. What does nicotine add? Does carbon filter taste disappear with higher delivery cigarette?"

Q Now, on the documents 2869, 2870, 2871, 2872, and 2873 you have just read to us, this is in your handwriting?

A Yes, it is.

Q It was made as part of your employment at Philip Morris?

A Yes, it was.

Q Do you know how this document got to Hatsy Heep's house?

A It was probably in my file.

Q The next document, 2893, has at the top of it in the right-hand corner "R. A. Tamol," and I can't fairly read the date other than "January 2" something, and then "19" something.

A I can't make it out either.

Q Is this in your handwriting?

A Yes, it is.

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Q Was it done while you were at Philip Morris?

A Yes, it was.

Q How did it get to Hatsy Heep's house?

A It was probably in one of my files, that file.

Q Do you want to read -- I can read "Programmed smoker." Did I read that right at the top?

A Yes.

Q Would you read the words -- the other words on this paper for me.

A It shows a graph. There is in the Y axis is something. "Ratio" something. It says "10" and "5." Then the other axis is "1 to 2 ratio TPM to gas phase." Then it shows several curves.

"AM cigarette, "I'm not sure what that means. Filter," I don't know what the next word is, an arrow. Above that there is a tree-like drawing that shows "TPM, gas phase, dilution air."

Under that there is "Purpose (1)" nothing. "(2)" -- is blank. "(2) filter" something, "filler" maybe, I can't make that out. "(3) Dilution effect."

Then there is a lower graph. Again, it looks like the same -- It says at least the Y axis --

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the X axis is "Ratio, side stream." Then there is a drawing to the right that shows a Y of "side stream" and must be "dilution." I can't make that out.

Q The next document is 2878 and 2879. That shows your name in the upper right-hand corner. Part of the stamp reads 1965. Would you read this for me, please.

A Yes, I will. "Program" underlined, "Be waiting for required tar nicotine levels. (1) Investigate dilution, TPM and gas phase ratio. (2) Mask gas phase. (3) High TPM efficiency filter - could be longer filter if taste. (4) Determine minimum nicotine required to keep normal smoker hooked."

Q Would you read 4 again for the record, and read it slowly.

A "Determine minimum nicotine required to keep normal smoker hooked."

Q Did you leave a word out? Do you want to read it again slowly?

A "Determine minimum nicotine required to keep normal smoker hooked."

Q This word between "nicotine" and "to," you're reading as "required"?

A Yes. "Required." That's my abbreviation.

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Q That document, page 2878, was written in your handwriting?
A Yes.
Q As part of your work at Philip Morris?
A Yes.
Q How did it get to Hatsy Heep's house?
A It must have been in that same file.
Q Page 2879, is that written in your handwriting?
A Yes, it is.
Q Part of your work at Philip Morris?
A Yes, it was.
Q Got to Hatsy Heep's in the same way?
A Must have.
Q Would you read the boxes from left to right.
A On the top or the bottom?
Q Why don't you start at the top of the page, and you can read them in whatever order you prefer.
A "Possible basic brand development areas." First box, "Low RTD." Next box, "Flavor filter and filler." Third box, "Filter." Fourth box, "Sidestream aroma paper." Fifth box, might be "appearance." And something above, "Material savings by," I can't read the rest of it. Box, "New brand," I

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can't read that. Under its box is "Crimped filler."

On the bottom, "Basic brand development." First box is "What RTD desired is" -- I'm sorry, it might be "decreased is desirable? Detectable?"

The box under it with a line is, "RTD investigation machine - subjective conclusions."

Next box is "What TPM to gas phase ratio? Unfiltered filtered" -- I can't read that word. "This dilution" -- I can't read that word. "What minimum nicotine" -- I can't read the rest of that.

Another box, "Possible program" under it. Then next box is "Controlled smoker device, mask gas phase," I guess.

Over again above it, "Is sidestream a" something "possible" -- I can't read the rest of that. "What about" -- I can't read that. Below it, "Side stream smoke device." Again on top, "New filter tip - easy to grasp in mouth." Under it would be "models" and "subjectives."

MR. RUSS HERMAN: I'm going to, Rob, ask you, if you would, to locate the original documents that we have picked up from Hatsy Heep from the custodian that are identified as 2878 and 2879. We'll come back to this at some time later. We won't belabor it right now.

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I would like to ask you -- I might as well also ask you to do the same thing with 2866, 2867, and 2868. If you would do that now --

It's 20 minutes after 12:00. Mr. Tamol, my -- and counsel, my feeling is to go another 10 minutes, and then you can tell us how long a break you want to take.

I will tell you, at our present rate, that I should be able to -- I won't conclude the testimony today. But I should be able to conclude it next week within the time we have got. If that helps you.

MR. ALLEN: That's fine.

MR. RUSS HERMAN: Why don't we go for a little longer.

A "Existing sales growth cigarette."

MR. ALLEN: For the record, this is 2866.

Q I'm going to ask you now, sir, if you would, about 2848 --

MR. ALLEN: For the moment, you're skipping over 2866 through 2868?

MR. RUSS HERMAN: We're going to locate the originals on those.

Q -- 2848 and 2849. In the upper right-hand corner of 2848 is your stamp, R. A. Tamol, dated

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February 9, 1965. At the top, as I read it, is, "Program" is the first word?

A Yes, that's correct.

Q Could you help us and read the writing that is on this page.

A "Program RTD cigarette. Goal: Low RTD (0.5 inches plus at same delivery as a Parliament). Program: (1) Make 4 types with and without" -- I can't make that word out "hand made/back up plugs.

"(2) Smoke for TPM tar, et cetera. Nicotine. Phenol" scratched out. "Use Parliament as a control.

"(3) Determine best type (A) production ability to make (B) TPM results and backup requirements.

"(4) Send to descriptive panel.

"(5) Run all info" -- it looks like "emit." I can't read that last word. "Run all info" something.

"(6) Run HTI - machine made samples.

"Problem acrilan not available."

Q The next page, 2849.

A "Cigarette length: 84.6 millimeters long. Rod 64.5. Filter 15.0 millimeters." I can't make out the word under it. "Weight 0.84 grams. Circumference

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25.1. Total RTD 5.1. Filter 3.1."

Below that, "Filter efficiency 48 percent.

"Run RTD, TPM, nicotine, phenol compare with cellulose acetate, IR, OGP."

Q Just for the purposes of the record, I won't question you about the substance. But would you just for the record state what the abbreviation RTD means.

A That's resistance to draw.

Q TPM?

A That's total particulate matter.

Q OGP?

A I'm not sure what OGP is. I have forgotten. I can't recall.

Q Again, the document that you just read from, 2848, 2849, are in your own handwriting, were developed by you in your job at Philip Morris and were in materials you brought to Hatsy Heep's?

A Yes, they were.

MR. RUSS HERMAN: I think I will ask you about one more document, and then we'll break.

Q There is a document labeled 2737 to 2752, or a series of documents. They are stapled together, at any rate.

My questions to you: Is this a document

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developed at Philip Morris while you were employed there?

MR. ALLEN: I'm going to object. The question seeks an answer to where the document was developed. I think that goes beyond the --

Q Is this a Philip Morris document?

MR. ALLEN: I object.

MR. DELACROIX: Object to the form of that question. That's improper.

MR. RUSS HERMAN: I don't think it's improper. I'm entitled to know the chain of custody of this document and have it identified.

I'm identifying it. I'm asking the witness to identify it. If he doesn't know whether it's a Philip Morris document or not, he can tell me.

MR. ALLEN: Fair enough.

A Would you repeat the question.

Q Yes. This document on the first page of it, 2737, has your name R. A. Tamol, does it not --

A Yes, it does.

Q -- under product development; is that correct?

A Right. It does.

Q The dates are April 27 and 28, 1965?

A That's what it says.

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Q Would you look at these series of documents and tell me, to the best of your recollection, whether these documents were prepared for use at Philip Morris.

MR. ALLEN: I will permit the witness to answer.

A They appear to be. They have got the names of Philip Morris people in them and various comments on filter construction and TPM and things of that sort. They appear to be Philip Morris documents.

Q Do you know how these documents got to Hatsy Heep's?

A Again, they were probably in that file.

Q The file that you brought with you to Hatsy Heep's house?

A That's right.

Q Just so we can be sure on the record and only for identification purposes, the four individuals listed on the first sheet, 2737, has -- Strike that.

I will just ask you one question. There are seven names on the first page, 2737. Were all the folks mentioned on this document dated April 27 and 28, 1965, Philip Morris employees at that time?

A Yes, they were.

Q Now, I guess, since we have got original

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documents here, we ought to go ahead and complete those. I have previously asked you about document 002878, 2878.

The document I'm going to show you now corresponds to it, and it has the number TRT0010806. I'm going to show you --

MR. RUSS HERMAN: If you would get your copy out, Counsel.

MR. ALLEN: This is 2878?

MR. RUSS HERMAN: Right. Do you have it, sir? I'm going to hand the witness the original of that document.

Q First of all, do you recognize that as being the original as corresponding to the copy, 2878?

A Yes.

Q Is it in your handwriting?

A Yes, it is.

Q Now, beginning with your date stamp, would you read the complete document again for us.

A "Program - be waiting for" --

Q Wait a minute. Begin with the Bates stamp, if you don't mind, in the upper right-hand corner.

A It says "February 1, 1965. Program - be waiting for required tar-nicotine levels.

"(1) Investigate dilution, TPM and gas

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phase ratio.

"(2) Mask gas phase.

"(3) High TPM efficiency filter - could be longer filter if taste.

"(4) Determine minimum nicotine required to keep normal smoker 'hooked.'"

Q You're still reading the word -- on the original between the word between "nicotine" and "to" as "required"?

A Yes, I am. It reads "r-e-q-'-d" to me.

Q Okay. Now, with respect to 2879, I would like you to read from the original that I'm going to hand you, which corresponds and bears the number TRT0010810.

First, if you can, can you identify that as corresponding -- the original as corresponding to document 2879?

A Yes, it is.

Q It is in your handwriting?

A Yes, it is.

Q In the upper right-hand corner, what date is on the original?

A "February 1, '65."

Q The words right under the date, what do they say?

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A It says "Material savings by" -- I can't read that -- "Patch" -- Even in the original I can't make them out. "Patch." Even in the original I can't make it out. I would be guessing. Anyway, "Material savings by" something, something, maybe "packaging." "Packaging" maybe is that last word.

Q I would like you now, if you would, to read everything below the words "Basic" -- Well, do you see the word "basic" in the middle of the page?

A Yes.

Q On 2879 on the original, would you please read everything following the word "Basic."

A You mean below it or --

Q Yes. Is that "Basic brand development"?

A Yes, "Basic brand development."

Q If you would read everything below that, I would appreciate it.

A In the left side it says, "What RTD decreases is desirable, detectable?"

Below that, "RTD investigation, machine - subjective conclusions."

Next box says, "What TPM to gas phase ratio? Unfiltered, filter, carbon taste, dilution - carbon. What minimum nicotine level is required?" And that's my "r-e-q-'-d." "Possible program." I'm

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not sure, "Controlled smoker, device, mask gas phase." That's the way I read the original.

The next box says, "Is sidestream a sales" -- I'm not sure what that is, maybe "possibility, i.e., half and half." That's what I'm referring to. "What about light?" I guess that's what it says.

Below it, "Side stream, smoke, device."

Over to the right, "New filter tip - easy to grasp in mouth."

Then under that, "Model subjectives."

Q Again, 2878, 2879 were documents originated by you in your work at Philip Morris and were brought from your residence to Hatsy Heep's?

A Yes, they were.

Q I just have, if you will bear with me, one more set of documents that we have asked for originals, and then we'll all take a lunch break. Is that okay?

A Fine. I can go to midnight if you want.

THE WITNESS: You don't want to?

MR. ALLEN: Eight hours. We're not going to midnight.

THE WITNESS: No takers?

MR. ALLEN: Eight hours, okay?

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Q Documents 2866, 2867, and 2868. And I'm going to show you the originals, and TRT0010807 corresponds to 0002866, TRT0010805 corresponds to 0002867, and TRT0010809 corresponds to 002868.

MR. RUSS HERMAN: Counsel, I'll hand you the originals.

Q Take a moment and --

Sir, have you had an opportunity to compare the originals with the copies?

A Yes.

Q It's all in your handwriting?

A Yes, it is.

Q It was all done by you in connection with your job at Philip Morris; correct?

A Yes, it was.

Q These documents were brought from your residence to Hatsy Heep's; correct?

A Yes, they were.

Q Now, could you start with the original that corresponds with 2866, beginning at the top of the page where your state stamp is, would you read.

A It's "February 1, '65."

Q Now, on the left-hand margin are written some notes. Would you read the notes written in the left-hand margin first.

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A Is the star, "Mentholated charcoal filter - in case mucous flow or charcoal gets a boost, could correct a" something "of menthol market." "A chunk" maybe, I don't know. "Could correct" -- "connect."

Q "Could convert"?

A Maybe. I can't -- My scribbling.

Q I don't wand to read words in your mouth. We can strike my comment. I think that's fairer than me trying to read it.

Would you then read beginning at the top of the page all of the writing on this page.

A "Existing sales growth cigarette.

"(1) Half and half. Reasons, (A) Pipe smokers switching? Capitalize on half and half name? (B) New 'heavy' flavor smoking" -- "smoker finding desirable? Back to no filter cigarette taste? (C) Sidestream?"

Under "(2) Cool - (A) High menthol delivery desirable by menthol cigarette smoker," probably. Dash, "Drop in Salem."

"(3) Lark label on" -- "(A) Label on back about charcoal. (B) We say multifilter is better. (C) Charcoal future?

"Program, (1) Sidestream detection efforts, flavor paper for sidestream. Than "page

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number 7" is below that.

Q Would you read the original of 2867, please, beginning at the top right-hand side. What is it dated?

A It's also "February 1, '65." Begin reading?

Q Yes.

A "Low tar nicotine cigarette.

"(1) For government" -- I can't read "For government" something, something. "Alternative." Across the page it says "Against."

And "(A)" is "label packages may" underlined --

Q Let me stop you for just a second just so we understand the document. At the top of the page, you said, are the words "Low tar nicotine cigarette"; correct?

A Right.

Q There is a left-hand -- on the left-hand third line is the word "for," and on the right-hand in the same line is the word "against." If you would, as you just read through these pages, tell us what is the "for" and what is the "against" so we will be able to decipher that.

A "(1) Government has" something.

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"Alternative" would be "(A) Label packages may be injurious to health." This would be under the "for." "Congress tobacco interests" maybe "should" something. I can't make out that word.

"(B) Label" -- I can't make out that word. "Quantify tar and nicotine." Again this is under "for." "Smoker wishes to make decision."

Under "against" would be "(1) No taste in low TPM and high gas phase cigarette."

Under "For, (2) Government has to do something.

"(3) Company with flavorful - low tar - enough nicotine to keep smoker hooked" underlined. "Waiting will reap huge benefits. Will not necessarily have to be lowest tar." Then there is, "I.e., 22, 16, 8," circled, "acceptable" and "5."

Q Now, the left-hand side where you just read "(3) Company with flavorful - low" --

A -- "tar."

Q -- "tar. Enough nicotine to keep smoker hooked"?

A That's right.

Q "Waiting will reap huge benefits." Is that under the "for" column or the "against" column?

MR. ALLEN: Objection. The document speaks

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for itself.

MR. RUSS HERMAN: Well, I don't think it does. I think I'm entitled to ask that question.

MR. ALLEN: I think that goes to --

MR. RUSS HERMAN: I'm not asking substance. I'm asking under what column number 3 is, whether -- All I need to know is whether it's under the column "for" or the column "against." And the witness wrote this. He can tell me.

MR. ALLEN: I withdraw the objection. I think it's in violation of the Court's order, but I don't have any problem with letting the witness answer.

A It looks like to me it's under "for."

Q Now, let's go to the third page, 2868, and if you would look at the corresponding original. At the top right-hand corner, what is the date?

A "February 1, '65."

Q Would you read what is on that page.

A Under "Health cigarette" underlined. Then there are two columns: "Arguments for" underlined and "Against."

"Arguments for" would be "(1) Biomedical names plus 'Readers Digest' might recommend after

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partial results. Gamble" underlined.

"Against" there is 1, 2, 3. "(1) Any acceptable claim would have to be at 100 percent level, i.e., mucous flow and proven beyond a doubt. No clear-cut analytical procedure envisioned. Cancer effects still not provable. Not in immediate future - two years."

Under "(2)," again in the "Against" column, "Any fully accepted health cigarette would have to be shared with other companies, i.e., moral obligation. Couldn't wait and corner the market.

"(3)," under "Against," "Why isn't carbon filler booming?

"Conclusions: Major research effort" something, something, "if only to intelligently interpret the findings that are to be published. Major breakthrough unlikely. Complete retraining of public to such things as mucous flow. Not an immediate future, two years."

Q So documents 2866, 2867, 2868 were all made by you while you were working at research and development at Philip Morris in February of 1965; correct?

A They were.

Q Got to Hatsy Heep's house from your

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residence on --

A Shady Crest.

Q -- on Shady Crest; correct?

A Right.

Q We have one more document. This is document 2819. I'm going to hand you the original.

(Off the record.)

THE VIDEOGRAPHER: On the record at 12:57 p.m.

Q Sir, I'm going to hand you the original, which is marked TRT001084, which corresponds to 002819. It's in your handwriting?

A Yes, it is.

Q In the upper right-hand corner is the date. Would you read the date for us.

A "February 22, '65."

Q Is it 1965?

A 1965.

Q This document was made by you in your work at Philip Morris, research and development?

A Yes, it was.

Q It's in your own handwriting?

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A Yes, it is.

Q It got to Hatsy Heep's house from your residence; is that correct?

A Yes, it did.

Q Would you read it, beginning at the top.

A "Questions of Jet Lincoln. Paper filter taste. Low RTD. Sidestream. Low tar. Carbon - Paxton filter. GM - Oldsmobile - innovations best for old brands or new? Filtered versus unfiltered. Appearance. Nicotine to keep a man hooked?"

Q The documents which we have so far identified from RAT Exhibit 11, including the last one we identified, Exhibit 2819, when you took these from Philip Morris home, did you keep them in a particular file?

A I don't know where they were. I didn't know I took them home.

Q So you don't know where they were at your home before you brought them to Hatsy Heep's?

A That is correct.

Q Was there a policy at Philip Morris -- Strike that.

MR. RUSS HERMAN: We'll just come back to this after lunch. It's 10 to 1:00. Off the record.

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THE VIDEOGRAPHER: We're off the record at approximately 12:59 p.m.

(Luncheon recess taken from 12:59 to 2:44 p.m.)

THE VIDEOGRAPHER: The correct time is 2:44. We're on the record.

Q Mr. Tamol, before we recessed for lunch, I was questioning you from Exhibit RAT-11. You were reading for us documents that were in your handwriting that you have written while employed at Philip Morris.

I am going to resume my questioning in the same vein with other documents that have your handwriting, and I'm going to hand you and counsel both the copies and the original.

First, we'll look at Exhibit 2854 and 2855 of RAT-11 -- Strike that.

We'll look at pages 2854 and 2855 of Exhibit RAT-11. And in order to facilitate this, I'm going to hand you my copies along with the originals.

If you would just compare them to make sure that I have handed you the originals which correspond with those pages.

MR. BERTAUT: What is the number, 2824?

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MR. ALLEN: 2854 and 2855.

Q Sir, have you had an opportunity to look at those?

A Yes, I have.

Q Would you read the number on the original document that corresponds with 2854 for me.

A TRT0010417.

Q Would you read the number on the original document which corresponds with 2855.

A TRT0010418.

Q Would you, beginning with the 2854, which begins, I believe, in the upper left-hand corner with the word "Low" and then "RTD," would you read the handwriting on that page.

A It's "Low RTD - for long puff. High efficiency section. Low dilution air."

To the right "19 milligrams, 17 milligrams for Parliament, for same RTD."

And then there is the drawing of the cigarette, which is "high flavor, flavor and filter, flavor plus nicotine" with that scratched out.

"Use 15 millimeters series 'T' perforated." Then there are some numbers to the side. "70 percent" of "70" something "4900 of total."

Then to the right there is "70" again, "49

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percent." And it says "30 dilution air." Then another notation says, "Low RTD from 19 to 9 will give more TPM per puff." Then it is "1-1/2, 1 milligram, 9 actual." Then to the side, there is a division "8 into 20 goes 2-1/2 milligrams per puff. 50 percent." That's about it.

Q Would you read the handwriting on page 2855, but read it from the original.

A It shows a picture of a cigarette. It says, the cigarette portion, "Blend for low nicotine (threshold)."

Then the filter says, "Series 'T.' Flavor may" -- I can't read the word. "CA" something "may" -- CA stands for cellulose acetate portion. I can't read that.

Then it shows "20 milligram" filter. And then it shows "Dilution holes." Then it says, "Low delivery." Then (1) is, "Claim same tobacco utilize series 'T'. (2) Holes in filter. (3) Flavor in plug."

Q This, again, was a document written by you while you were employed by Philip Morris as part of your work and brought from your house to Hatsy Heep's house?

A Yes, it was.

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Q I'm going to show you document 2796 of RAT-11 and corresponding with it to the original --

MR. ALLEN: Number 2796?

Q I'm going to show you document 2796, which corresponds to original TRT0010808. At the top underlined is the word "Major." I'll pass you my copy of 2796 so you can look at it with your counsel and compare it to the original.

Does it appear to be the same as the original that you have in your hand?

A Yes, it does.

Q Would you please -- It's in your handwriting, and it was done by you while you were at Philip Morris?

A Yes, it is my handwriting.

Q Would you please read it, beginning with the handwriting at the top.

A "Some disturbing questions regarding" something "cigarette." I can't make out the rest. "Be" something. The date is "February 1, 1965." Then I have a title, "Major questions on cigarettes."

Q Before we get to that, is there a number in the upper right-hand corner?

A Yes, "(2)."

Q Thank you.

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A "Major questions on cigarettes. (1) What is carbon taste? (2) What ratio of TPM to gas phase is still smokable? (3) What RTD is most desirable? (4) Can sidestream be used to sell a cigarette? (5) Can a health cigarette be marketed? (6) Will the tar derby begin anew? (7) How can mucous flow be sold?"

Q Again, that was brought by you from your house to Ms. Heep's house?

A Yes.

Q I'm going to show you 2797, which corresponds with the original document TRT0010422, and ask you if they correspond and if it's in your handwriting and done by you as part of your work at Philip Morris.

A Yes, it's my handwriting and was done while I was at Philip Morris.

Q And brought by you to Ms. Heep's house; right?

A Yes.

Q Would you please just read --

A "Brand development. (1) Low draw series 'T.' (2) Paxton flavor. (3) Multifilter." And "(4) Polyox carbon on tow."

Q I'm going to show you Exhibit 2904 -- excuse me, page 2904, and contained in RAT-11. It

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corresponds to TRT0010421 on the original. I will ask you to look at it and compare them and see if they are in your handwriting and was done by you as part of your work at Philip Morris and brought by you to Ms. Heep's home.

A Yes, it's in my handwriting. Yes, it was brought by me to Ms. Heep's house.

Q If you would, sir, what date?

A It's "February 1, 1965."

Q Would you read the information that is on the original.

A "Conclusion priority ranking. (1) Low tar flavor cigarette" -- I can't make that word out, something "recommended. Marked packages." To this left it has got 193.0 billion.

"(3)," I guess, "Good flavor multifilter."

"(2)" -- And between 2 and 3 there is a "gas phase activity" notation.

"(2)" is "mentholated charcoal filter. Could pick up." And to the left it's "112.73." To the right "Some kind of formal recognition of charcoal.

"(4) Sidestream aroma cigarette. (1) Pipe like. (2) Eliminate paper odor."

Item "(5)" is "Low RTD cigarette?

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"(6), Miscellaneous," with a notation slash across the page. Then "Long range. (1) Crimped filler."

Then there is some subtractions or additions down at the bottom of the page.

MR. RUSS HERMAN: I'm going to hold some documents up so that counsel can attempt to find them in their packets. The Bates numbers are: 2766, 2767, 2768 and 2769. They appear to be graphs with curves on them and then some calculations.

Q Now, I will ask you if these documents are documents that were generated at Philip Morris while you were in Philip Morris' employ and which were brought by you from your house to Ms. Heep's.

A Are you going to give me the originals?

Q Your counsel has the copies. I want to show you, so we don't get confused, the custodian of the original documents only has three of the four documents. So be careful when you try to match them with the Bates numbers I have given you.

If your counsel wouldn't mind assisting us --

MR. ALLEN: It appears here that we have an original which corresponds to Bates number 2766,

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and on the original is the number TR20010915.

Next, we have what appears to correspond to Bates 2767, and the number on the original which appears to correspond to 2767 is TRT0010919.

Then the third original appears to correspond to Bates 2769, and on this original is the number TRT0010914.

What that means is that the copy for which there is no corresponding original is Bates 2768. Let me see if I'm right.

THE WITNESS: I think they are one and the same. I think it's a double copy.

MR. ALLEN: Wait a minute. I think I have mixed it up. Can we go off the record for a second.

MR. RUSS HERMAN: Sure.

(Off the record.)

THE VIDEOGRAPHER: Back on the record at approximately 2:33.

MR. ALLEN: Let me clarify what I think I have just discovered, which is that Bates 2767 and 2768 are, in fact, photocopies of the same document.

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They may appear to be different because 2767 is such a faint photocopy that some lines that appear on 2768 are not appearing on 2767. That gives it the appearance of being a different document, but it, in fact, appears to be identical, just a fainter copy.

So the original document marked TRT0010919 is the original of both 2767 and 2768.

Q If you would, turn to page 2766 of Exhibit RAT-11. Do you see in the left-hand side -- Would you just read the numbers from the top down the left-hand side.

A "80, 70, 60, 50, 40, 30, 20, 10."

Q What is the writing to the left of that in the margin?

A "Smoke gas phase IR index."

Q The last word -- or the first word that appears at about 15, column 15?

A "100 percent polyox" is along the axis. Then it's "MF2 type cigarette polyox - carbon."

Q Then at the bottom, would you read those numbers.

A Scale is 10 -- goes from 10 to 130, and under the notation is "Carbon - milligrams 40 by 60 mesh."

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were brought from your house to Ms. Heep's house?

A I would assume so, yes.

Q During the recess, Mr. Tamol, you and your counsel have had an opportunity to review within RAT-11 documents Bates stamped 6141 through 6291. As I understand it, this has nothing to do with your tobacco work?

A That is correct.

Q This is a private matter that you developed that has to do with a children's game?

A That's correct, ferrofluids in particular.

MR. RUSS HERMAN: Therefore, I'm going to remove with the consent of all counsel these documents, that is, pages 6141 and 62 -- through 6291 from RAT-11, and while we'll keep our copies, we'll agree to keep them confidential.

MR. ALLEN: Thank you.

Q Now, I would like you, having removed that from the file, just to thumb through the remainder of Exhibit RAT-11 with me, and we'll see if we can move through the rest of these. That's 24278 --

MR. ALLEN: Let me make a suggestion. Why don't we just order these from lowest number to highest, and we can go through them.

MR. RUSS HERMAN: I have got them in

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chronological order where they appear.

Q But I'm just going to show these to you. I will hand them to your counsel. We can see if we need to ask you anything about them.

They are marked on an Eastron, E-a-s-t-r-o-n -- notes on an Eastron, E-a-s-t-o-r-n, tablet or paper?

MR. ALLEN: What are the Bates numbers again?

MR. RUSS HERMAN: 24278, 24279, 24280 and 9498.

MR. ALLEN: The last number was 94 --

MR. RUSS HERMAN: -- 88. It looks like this.

Q I just ask you if this is in your handwriting, realizing that 24279, my copy, doesn't have anything on it.

A Yes, that's my handwriting.

Q To the best of your knowledge, was this done by you while you were employed by -- these documents done by you while you were employed at Philip Morris?

A I would say so, yes.

Q Do they -- Now, also in SAT-11 (sic) are documents marked 2459, 2460, 2461 and 2462.

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MR. ALLEN: 59, 60, 61 and 62?

MR. RUSS HERMAN: Yes.

Q These four documents from RAT-11 bear the stamp in the upper right-hand corner of "R. A. Tamol" and are dated "October 10, 1988." Do you see that, sir?

A Yes, I do.

Q Were these documents written by you as part of your employment with Philip Morris?

A Yes, they were.

Q And taken by you from your home to Hatsy Heep's?

A They had to be in one of my files.

Q Would you, looking at 2459, read the words to us.

A It's a graph of "Solubility" versus "Pressure." The top curve shows "Nicotine" and then "Wax." Those are two notations on two of the -- 1, 2, 3, 4, 5 curves.

Q There is another graph below it?

A Yes. That acts like "Percent of reduction," the other would be "Time." I can't make out the other two words. It's conjecture.

Q Do you see the first dotted line?

A Yes.

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Q Can you make out any of those lines?

A It looks like N-I-C-T. It could be nicotine. The other is -- I can't guess at that one, C-O-Y.

Q That's document 2459; right?

A That's right.

Q Let's look at 2460 beginning on the left. Can you tell me what the word at the top of the page is?

A "Theory." The graph shows "Solubility versus Pressure," and a sharp break in solubility at a certain pressure.

Q Below that is another drawing or a graph?

A Yes. It says "Solubility in CO2 with time." And then the other axis is "Pressure." And one of the curves say "Nicotine." The other says "Waxes."

Q On the upper right, could you read those words for us.

A Yes. The axis next to -- the vertical axis to the right, "Density change." I'm not sure what the lower says. It might be "With device." Then there is a notation "Local pressure" with an arrow to the curve.

Q The one below that, sir.

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A "Solubility," and it doesn't have anything on the horizontal axis. But it looks like it says "Waxes" and then the straight line might be again "Nicotine." It looks like N-i-c.

Q The drawing below that on page 2460 of RAT-11.

A Again, the vertical axis says "Pressure." And then one X is "Water," and another X might be "Nicotine." I can't make that out. It might be "Nitrate." I don't know. I can't make that out. I don't know. "Can" something "with device." I don't know. I can't make out the second word.

Q That is next page 2460 of RAT-11. Let's turn to page 2461 of RAT-11. Can you read the handwriting for me on that page.

A Yes. It says "Art" on top. "Existing pressure." It shows a pressure tank with the "Pressure, Temperature, Time," some valves. There is another box showing "Stem." And then off to the side says "Citrate concentration."

Then it says "Cycle." And under Cycle it's "Hogshead." To the right is "CO2 baker pressure." It must be "Nicotine vapor pressure. Solubility of nicotine and CO2 of tobacco" something "of tobacco" some word "in CO2. Where nicotine located in tobacco?

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12 percent" something "citrate." I can't make out the word.

Q Then would you look at page 2462 of RAT-11 and read what is written there.

A The heading is "Nicotine." To the left says "Density is 1.0092 at 20 degrees." It's a formula here. "(S)-3-(1-" menthol. It should be menthol, not "methyl." "-2-pyrrolidinyl. I'm not familiar. Then it says "pyridine" off to the side. Then "super critical - zone." And "near critical - zone."

Q Again, 2459 through 2462 were written by you in connection with your work at Philip Morris?

A Yes, they were.

Q And brought by you to Hatsy Heep's house from your home?

A They must have been in another file.

Q With reference to 5751 of RAT-11, it's dated March 28, 1990, Appendix 1, Philip Morris U.S.A., Inter-Office Correspondence. Is that your signature, sir?

A Yes, it is.

Q This is what it says it is, is it not, "Philip Morris Inter-Office Correspondence"?

A Yes, that's what it was.

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Q This is another document that was in your files on materials that went to Hatsy Heep's house from your house?

A Yes, it must have been.

Q The next document I have is 4124. It says, "Philip Morris Job Order Request Form, May 17, '91." Now, the first approval on it has a signature on it dated May 10, '91. What does that say?

A "Requestor," and my signature is there.

Q No, above your signature, sir.

A I don't know. Richard -- I'm not sure who it says.

Q Well, it says "coordinator" below your signature. Whose signature is that?

A James Myracle.

Q Do you see a signature that's M-y-r-a-c-l-e?

A Yes.

Q There is a signature for "other." It looks like a B.A. something?

A No. It looks like an "L" something, Williams something. Williams, yeah.

Q What looks like to be Richard A. Cox, do you see another signature?

A Yes, B. A. Pomfrey.

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Q This again was a Philip Morris document?
A Yes, it is.
Q It has your signature on it, and you signed it at the time you were doing work for Philip Morris and came from your house to Hatsy Heep's; correct?
A Yes, it is.
Q Now we have something document -- 2080 through 2085, says "Smoker's Self-testing Kit, Part 1: The Test." Do you ever recall seeing 2080 through 2085 before?
A No, I don't.
Q Next document is 2381. What I'm going to ask you to do is look through the rest of the documents, and I'll read you the numbers that are in Exhibit RAT-11: That's 2381, 2400, 2464 --
MR. ALLEN: 2381, what is the next one?
2400 was the second one?
MR. RUSS HERMAN: 2400.
Q 2464, 2465, 2507, 2526, 24281, 24272, 24273, 2736 --
MR. ALLEN: What was the last one, 2736?
Q -- 24274, 2606 through 2610, 2602 --
MR. ALLEN: Through?
Q Attached to 2602 is 24277, 24282. Next, 24275, 24276, next 3803, next 2073, 2074, the next

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12981.

MR. ALLEN: Let me ask you, I think you called out a number that I'm lacking. Do you have a document between 24274 and 2606?

MR. RUSS HERMAN: No, I do not.

MR. ALLEN: My mistake.

Q I'm going to ask you a compound question in the nature of the questions I have asked you. Are these documents either written by you or accumulated by you as part of your Philip Morris work while you were employed at Philip Morris and brought from your home to Hatsy Heep's?

THE VIDEOGRAPHER: We're going to go off the record for a second at 3:07.

(Off the record.)

THE VIDEOGRAPHER: We're back on the record at approximately 3:11 p.m.

Q First question: Are these either documents which originated with you or were generated and used by you in connection with your work at Philip Morris?

A Yes, they look like they are.

Q The second question is: These documents are documents that came from your house to Ms. Heep's?

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A Yes.

Q If you would look at 2465, a paper entitled "Major Tobacco Alkaloids" with chemical symbols, et cetera, do you see that?

A Yes.

Q What are the words that are written in larger letters under "nicotine"? I believe the first word looks like "Liquid" to me.

A It looks like "Liquid at" probably "room temperature." It says "Liquid at room temperature." It is saying it twice. It says "Liquid at room temperature."

Q In the lower right-hand corner of 2465 are some words in parentheses. Would you read those for me.

A This is not my writing. But It looks like "found in green coffee." I can't make out the next word. "May complex with caffeine also found in other dicoty" -- I don't know, some kind of plant. I can't read that word "as tobacco."

Q Is that d-i-c-o-t-y-l-e-d-e-n-o-u-s, dicotyledenous plants?

A That's right. That's how I would read it. It's not in my handwriting.

Q Do you know whose handwriting it is?

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A No, I don't.

Q Now, if you would turn to document 24272. Do you see the letter on the left, "A"?

A Yes.

Q Would you read beginning with "A."

A A says, "Starting rate - less men - more women. B, smoking rates should be less. 1966, 7.7 packs (actual 10.5.) Same for 1976. C, Quit. Less than ratio 1955 to 1966." And there is a bar. "Male and female, 25 percent increase," looks like "26 to a 31.4, 18 to 24.6, 56 million, 1967. 1976, 656 billion, 590 billion, filters, lower 590 bill, 531."

Q Below the line that bisects this page, 24272, would you read what is written there.

A It says, "Lou on Marlboro. Marlboro 116" I don't know that word, something "of 1465. Under 35. Men - 60 percent under 35, 36 percent all others. 90 percent of men, 35 market. Women, 70 percent under 35. 44 percent all other. 11 percent under 35. 7 percent all other. Reasons: Taste (Good compromise) (between taste and mildness.) Other filter are switchers" are "(good loyalty)".

Q Are these notes in your handwriting?

A Yes, they are.

Q On the second page, 24273, of this

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particular document contained in RAT-11, would you read the words that are on there.

A It says, "Image: Taste number 3. Safety number 5. Coughing number 5. Best filter number 4. Best draw number 3. Masculine number 1." Under that it says "men" and "women." Mostly for "poor 5 & 6, Marlboro same ratio as other brands, women and men." First three -- To the side it says, "First three are dominant."

Q I'm not going to ask you about substance. I need an explanation. The words "first three are dominant." To what on this page does that apply?

MR. ALLEN: Objection. That is a question about substance on the document.

MR. RUSS HERMAN: I don't think it is. There are a number of things on here, including two 3s.

MR. DELACROIX: I join in the objection, Russ. I think that's a substantive question about the document.

MR. RUSS HERMAN: We'll just continue to reserve our rights on any questions that he has been instructed not to answer.

Q Now, on 2736, would you read beginning with the word "According to Lou."

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A I can't find it.

Q 2736, it appears to be signed by you. It's dated 4/14 --

MR. ALLEN: That's the one that I was missing.

THE WITNESS: It's not here.

MR. ALLEN: I don't have a 2736.

Q Let me ask you individually about 2736. Does it bear your signature at the bottom?

A Yes, it does.

Q It is to Mr. F. E. R-e-s-n-i-k?

A Yes, and Saleeby.

Q It's dated?

A 4/14/65.

Q And the subject is?

A "Pinnacle cigarette BaP delivery."

Q For purposes of the record, what is B-a-P?

A It's benzo a pyrene.

Q Would you read the handwriting. It is your handwriting?

A Yes, it is. "According to Lou Weissbecker, casing tobacco should reduce BaP delivery. The new American Tobacco Pinnacle appears to be heavily coated with sugars. I suggest that a BaP determination of this cigarette be run and compared with our brands.

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This may be their attempt at a low BaP cigarette."

Q Again, this is a document that went from your house to Ms. Heep's?

A Yes, it appears to be.

Q Now, next document is 24274 dated 4/11/67. it says, "Smoke survey."

MR. BERTAUT: What was the number?

MR. RUSS HERMAN: 24274.

Q Do you see that, sir?

A Yes, I do.

Q Now, the first word I would like you to look at is, is it p-a-n-t, p-a-r-t? Do you see that?

A It says "third part." I would say it's something "part," maybe "third part."

Q Would you read the line under that.

A "Data and results (available)." I can't make out the second -- something in number 2. Then there is a dash, number 3.

Q Would you read the next line.

A "Mr. Babbitt, manager of economic analysis, national analyst, part I." Then it's something "taste - tar - how to choose? Female awareness of health." Slash. "P. J. Burns, projected market, 1976, starting, cigarettes smoked, quitting."

Q If you would look at 2607 dated March 5,

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1968, a memo from yourself to a gentleman or a lady, I guess this is, a Ms. T. C. Heatlowe. Do you see that, sir?

A Yes, I do.

Q On the second page is an arrow with some handwriting. Could you just tell me what the handwriting is on 2607.

A It says -- It's my handwriting, it says "when adding tergitol."

Q If you would look at 2602 -- actually 24277, dated in 1968, and it says at the top "M-T-G of"?

A I would read that as "Meeting of ECUSTA."

Q ECUSTA is E-C-U-S-T-A?

A Yes, it is.

Q Is this your handwriting?

A Yes, it is.

Q Would you read to me the words on this page.

A "Tamol. 30 millimeters." Is a drawing shows "30" and then three sections of cigarette, apparently, "30, 35." Then below the "30" is "1.5" and then "6 lines - ten thousandths times .014," I guess 14 thousandths. "Lea. 750 at 120 feet per minute. 7 to 10 microns. (Discrete line.) WSRN 80

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at 40 to 60 neat per minute."

Q All right, the word L-e-a, is that a person's name?

A Yes, it is.

Q Does that refer to David or "Dave Lea" farther down on the same page?

A Probably, yes. I don't remember his first name.

Q Is ECUSTA, is that an abbreviation for something?

MR. ALLEN: Objection. We're getting into substance.

MR. RUSS HERMAN: I think I'm entitled to inquire what E-C-U-S-T-A is, whether it is --

MR. ALLEN: No. You're entitled to have him clarify what illegible notations are.

MR. RUSS HERMAN: I'm not going to argue with you, Counsel. I think you're wrong. I reserve my rights. You're instructing him whether E-C-U-S-T-A is an abbreviation or a name?

MR. ALLEN: That's correct. It goes to the meaning of the content of the document.

Q Under "status," would you read (2) please.

A "Status - Dave Lea. (1) 750 works best.

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(2) 40 to 50 per minute, not considered commercial operation. (3) Thickness - drying. Owens - blocking - pressure sensitive.

"Pilot coating. (1) 750 - could run 200 feet per minute. Owens. (2) Better" -- maybe, I'm not sure of the word, might be "coating on large holes. Question Tamol. (3) 2 stage coating? Contact pulls material out. Lea. (4) Skin effect with bubble coating."

Q Would you turn to the next page, to 24282. Do you see the date "11/28/67"?

A Yes, I do.

Q Is this your handwriting?

A Yes, it is.

Q Would you read the words on that page for me.

A "(1) Gravure - backing rule - pickup could be" -- I can't make out the next word. "Tried no backing. (2) Flexo - may be tried - Lea. (3) Staley impossible. (4) Titanium dioxide and calcium carbonate. Lea. Filler - help" -- I can't read that word. "(5) Jim. (6)" is -- "Oxidizer. Lea plasticizer" is (8). "(6)" is "Dave. (7)" is "scanning electron microscope." I referred to (8). "(9)" is "bubble coating. Basic investigating

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boxboard industry." Star "Entirely different."

Q That concludes my questions as to RAT-11. So the record is clear and because we have removed some documents that were personal to you and some that you could not identify earlier, I'm just going to go through the numbers of pages that are now in RAT-11.

RAT Exhibit 11 consists of pages: 2891, 2885, 2886, 2887, 2888, 2889, 2880, 2881, 2882, 2883, 2884, 2869, 2870, 2871, 2872, 2873, 2893, 2848, 2849, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2744, 2745, 2746, 2747, 2748, 2749, 2750, 2751, 2752, 2866, 2867, 2868, 2878, 2879, 2819, 2854, 2855, 2796, 2797, 2904, 2766, 2767, 2768, 2769, 24278, 24279, 24280, 9488 --

MR. COPLEY: Go back to 2797.

Q 24279, 24280, 9488, 2459, 2460, 2461, 2462, 5751, 4124, 2080, 2081 --

MR. DELACROIX: Slow down, because once you finish, I'm going to ask that we take a couple minutes so that Mr. Tamol and Mr. Allen and ourselves can go through and make sure we correlate everything you're telling, so it's important.

MR. ALLEN: I lost you. Let me ask you to go back to 24280. Start there.

Q Sure. After page 24280 in RAT-11 is 9488,

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2459, 2460, 2461, 2462, 5751, 4124, 2080 through 2085, 2381, 2400, 2464, 2465, 2507, 2526, 24281, 24272, 24273, 2736, 24274, 2606, 2607, 2608, 2609, 2610, 2602, 24277, 24282, 24275, 24276, 3803, 2073, 2074, 12981.

MR. DELACROIX: Why don't we take a little break, Mr. Herman, so Mr. Tamol and Mr. Allen and I make sure we're all in sync with this.

(Off the record.)

THE VIDEOGRAPHER: We're back on the record at approximately 3:51 p.m.

Q I show you RAT Exhibit 9. It's a document and has a bar code, and under it is a number 89-026, session number, issued to R. Tamol, dated June 12, 1989, apparently written by someone named Martha K. Smith and approved by Murray D. Rosenberg.

This document bears numbers TRT0010291 through 0 -- TRT0010315. Let's go off the record while I explain to counsel this numbering.

THE VIDEOGRAPHER: We're going off the record at approximately 3:53 p.m.

(Off the record.)

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THE VIDEOGRAPHER: Back on the record at approximately 3:57 p.m.

Q Sir, I have handed you Exhibit RAT-9, which are pages designated as TRT0010291 through TRT0010315, and correspondingly PMI50020 through PMI544, issued to R. Tamol, Philip Morris U.S.A. Research Center, Richmond, Virginia, dated June 12, 1989.

Have you had an opportunity to look at --

A Yes, I have.

Q The title of this report is "ABRVS." Does that stand for abbreviations?

A I would assume so, yes.

Q "ACRONS" stands for acronyms?

A I would assume so, yes.

Q Under the report title, it says "A List of Abbreviations and Acronyms Appearing in the Monthly Progress ('Redbook') Reports of the Research and Development Department." Do you see that?

A Yes, I do.

Q At the top it's marked "Restricted." Do you see that?

A Yes.

Q Down the diagonal is marked "Confidential"; is that correct?

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A Yes.

Q If you would turn with me to the second page and third page, that's page 0292 and 0293, at the top it says "Distribution," and then there are a list of individuals. Do you see those, sir?

A Yes, I do.

Q If you would turn to the first page, also, do you see where it says, "This report is confidential to the business of the company. It has been assigned to you. It's not transferable and must not be copied.

"If the report has served its purpose and is no longer needed, please return it to the central file at the research center for record keeping and destruction"?

A Yes, I do.

Q Can you identify this, sir, as an official Philip Morris document?

A Yes, it is.

Q This document came from your house to Hatsy Heep's?

A I assume it did.

Q In the boxes of files you maintained?

A Uh-huh.

Q Is that correct?

A I assume so. I don't remember seeing this.

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Q This document dated June 12, 1989, predates your retirement from Philip Morris in 1992; is that correct?

A That's correct.

Q You see on the first page of the report it says, "If the report served its purpose and is no longer needed, please return it to central file at the research center for record keeping and destruction"?

A Yes.

Q Were these types of reports regularly -- that is, these confidential period reports -- Did you have reports like this issued to you at other times during your employment at Philip Morris?

A Yes, I would.

MR. ALLEN: Object.

MR. DELACROIX: Objection to the form.

Q Did some of those reports also have words relating to confidential business of the company and returning reports to the central file for record keeping and destruction?

MR. COPLEY: Object to form.

MR. DELACROIX: Same objection.

MR. COPLEY: Object to the form of the question.

MR. BERTAUT: I object to the scope as

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being outside of order of the judge.

Q Can you answer my question, sir?

A Yes. This is a special report. From time to time early in my career, I was on distribution for completion and annual reports, some annual reports.

Q They were supposed to not be copied but returned to some central place where they were either filed or subject to some corporate destruction policies; is that correct?

MR. COPLEY: Object to the form of the question.

MR. DELACROIX: Object to the question.

MS. BRAUN: Object to the scope.

MR. ALLEN: The order permits you to inquire, as I read it, into deponent's understanding of any document destruction policy.

MR. RUSS HERMAN: That's what I'm asking him.

MR. ALLEN: Ask that directly.

MR. RUSS HERMAN: That's what I'm asking him.

MR. ALLEN: No. The question you asked are particular documents --

MR. RUSS HERMAN: I don't have to ask --

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MR. ALLEN: -- whether individual documents --

MR. RUSS HERMAN: I'm not going to ask it in your words. I'll ask it in my words.

MR. ALLEN: Ask it again. Maybe I didn't understand it.

Q This document RAT-9 or documents similar to it you received during your employment with Philip Morris; is that correct?

MR. DELACROIX: Object to the form of the question.

Q Is that correct?

A Yes, I did.

Q A number of those documents were subject to a direction from Philip Morris that they not be copied; is that correct?

MR. COPLEY: Object to form.

MR. DELACROIX: Same objection. Object to the form of the question. I don't know what you mean when you say "a number of these documents."

A Yes.

Q Documents such as RAT-9 that you received that were marked confidential had directions on them to return the document you received for record keeping and destruction; is that not correct?

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MR. COPLEY: Object to form.

MR. ALLEN: Objection, except to the extent you asked whether that was to his knowledge the policy. That's what you're permitted to inquire into under the judge's order, is whether they had a policy which provided that certain documents should be returned to the central file for destruction. If that's your question, that is permissible.

But if you're asking about individual documents as opposed to the policy, then I'm instructing the witness not to answer.

MR. DELACROIX: We join in that objection.

MR. RUSS HERMAN: Are you instructing him not to answer? Are you going to instruct him not to answer, also, Mr. Delacroix?

MR. DELACROIX: No, sir. I'm joining in the objection because I think it's outside the scope of the judge's order.

The judge specifically, in one of her transcripts, talked clearly about this witness' and the witnesses' understanding, themselves, personally, of a Philip Morris policy, not a generalized understanding of company policy that other people may have had or what policy may

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have affected other documents, but what these witnesses felt the policy was. That is specifically covered in the transcript.

Q Look at RAT Number 9. Was it your understanding that this document was confidential?

MR. ALLEN: Objection. Again, the judge's order says his understanding of the policy, not his understanding of a directive which applied to a specific individual document.

The policy -- His understanding of the policy is what you're permitted to ask about, not what he knew about a particular document that may or may not have contained a particular directive.

MR. RUSS HERMAN: Are you directing him not to answer the question?

MR. ALLEN: I am.

Q Let's turn to the first two pages of this document, which list distribution. Do you see the name Jay Lephardt in that list?

A Yes, I do.

Q Do you see the name I. Uydess, U-y-d-e-s-s, in that list?

A Yes, I do.

MR. COPLEY: I want to object as being

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outside the scope. He's not allowed to interpret the documents.

MR. DELACROIX: I'm going to object, also, Mr. Herman. The document speaks for himself. If you're asking him if he sees names in the list, the document speaks for itself. I think that is outside the bounds of Judge Chasez's order.

Q Do you see the name R. Tamol?

MR. DELACROIX: Same objection.

A Yes, I do.

Q Was it your understanding that this distribution as part of document RAT-9 was to be returned to the central file at the research center for record keeping and destruction?

MR. ALLEN: Same objection.

MR. COPLEY: Objection to form.

MR. ALLEN: The question pertains to particular documents, not to his understanding of the company policy.

MR. RUSS HERMAN: Are you instructing --

MR. ALLEN: I'm instructing him not to answer questions unless they are inquiries into his understanding of the company policy because I believe that to be the judge's order.

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Q Now, look at page 0295 entitled "List of abbreviations/acronyms appearing in Philip Morris R&D reports and memoranda." Do you see that page?

A Yes, I do.

Q That list continues for a number of pages until we get to page 0312, does it not?

MR. ALLEN: Objection. Again, this is clearly a typed list. It is absolutely legible. This witness' assistance is not needed to clarify any illegible portions identified in the document.

The question doesn't go to any of the areas that are permissible under the judge's order, and it speaks for itself.

MR. DELACROIX: We join that objection, Mr. Herman. I think he has already identified this document. I don't think there is any handwritten notations on this document that he needs to be asked about. It's a typewritten document which he has already identified.

I think the scope under paragraph 6 and 7 of the May 24th Amendment covers as to this document.

MR. RUSS HERMAN: Are you instructing him not to answer?

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MR. DELACROIX: No, I'm not instructing him not to answer.

MR. ALLEN: I am instructing him not to answer.

MR. RUSS HERMAN: You are instructing him not to answer?

MR. ALLEN: I am instructing him not to answer.

Q You see under the "Abbreviations/acronyms appearing in Philip Morris R&D reports and memoranda" identified in RAT-9, was it your understanding --

MR. GAY: What 9?

MR. RUSS HERMAN: RAT-9.

Q -- that Philip Morris U.S.A. Research Center, this memoranda, was it your understanding that it was to be returned to the central file at the research center for record keeping and destruction?

MR. ALLEN: Objection. Again, the question relates to a particular document and not to the witness' understanding of Philip Morris' policy.

MR. COPLEY: Object to form.

MR. ALLEN: I instruct him not to answer.

MR. DELACROIX: Same objection.

Q At the various meetings that you went to in research and development, at some of those meetings

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did Philip Morris or someone at Philip Morris designate an individual to go around and pick up copies of the confidential documents that had been distributed?

MR. ALLEN: Objection. That doesn't go to policy. Again, I hate to keep repeating myself, but my understanding of the judge's ruling that we're trying to comply with permits the witness to be asked regarding -- questions regarding his understanding of Philip Morris' document destruction, of the policy.

The question that was just posed to him goes beyond that provision of the judge's order. Therefore, I'm instructing him not to answer.

MR. RUSS HERMAN: Just so I'm clear, because we are reserving our rights to take appropriate action, Counsel, if you're instructing this witness not to answer a question as to whether Philip Morris appointed someone at various meetings at research and development to go around and pick up the copies of documents that were circulated that were marked confidential --

MR. ALLEN: Yes.

MR. DELACROIX: Mr. Herman, I'm likewise

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objecting to that inquiry because I think that's outside the bounds of the scope of the deposition.

Q Sir, at the meetings you attended internally at research and development, was it known to you that an individual in the room at a number of those meetings directed by Philip Morris was to pick up copies of the documents circulated and return them for record keeping and destruction?

MR. ALLEN: Same objection. The witness is instructed not to answer for the same reasons previously stated in the record.

Q Sir, did you ever get an instruction from anyone at Philip Morris while you were in the research and development department from 1963 to 1992 that related to any information about document destruction?

MR. ALLEN: Answer that.

A No, I don't recall any such meeting.

Q I'm not asking you about a meeting. Did you ever receive from anyone at Philip Morris from 1963 to 1992 in oral or written words relating to the destruction of Philip Morris' documents?

A No, I did not.

Q Now I'll show you Exhibit RAT-12. The pages are: 2720, 2721, 2722, 2723, 2724, 2974, 2903,

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and 2906.

MR. DELACROIX: Mr. Herman, I have a question of you. If you could answer it, I would appreciate it.

The numbering system for these documents don't seem to -- at least the manner in which these documents are being placed together and shown to the witness, they don't seem to correlate whatsoever.

The dates seem to be different. They don't appear to be in dated chronological order. The Bates stamp numbers do not tend to flow, either.

I know under the judge's order after you asked this witness to identify and authenticate documents, we're entitled to be produced all the documents.

I assume that we will be produced all of the documents that you're showing the witness today, including the ones that you have just presented him, which is RAT12?

MR. RUSS HERMAN: For the record, Mr. Delacroix, every document this witness has looked at today, I have simultaneously handed you two copies of.

I don't want the record to be unclear.

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Today, as this witness has been questioned, you have received, at the same time the witness has, each and every document the witness has, Bates stamped with an exhibit number on it.

As to your question as to Bates stamped numbers not following in sequence, all I can attribute that to is the documents were trashed or thrown together from different files, and they don't appear in sequence.

MR. DELACROIX: I don't know if that's the case, because --

MR. RUSS HERMAN: You asked me for an explanation. I'm giving you one. There may be 100 others.

MR. DELACROIX: This man's documents didn't have numbers on them when he left on the 27th. Now they have numbers on them.

I'm just trying to understand the sequence because they are obviously different than they were when he last saw them.

MR. RUSS HERMAN: I don't know that, because he didn't have numbers on them. You just said that. I don't know what sequence they were. Whether they were in garbage bags or thrown on the floor or --

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MR. GAY: Just for clarification, I'm confused, really confused now, because I was assuming that you-all put the Bates stamps on here.

MR. RUSS HERMAN: We did.

MR. GAY: I think you represented that to the Court.

MR. RUSS HERMAN: Sure.

MR. GAY: You did it in some form of order. Now these documents have been presented out of order --

MR. RUSS HERMAN: That's because --

MR. GAY: Let me finish. -- insofar as the Bates stamps are concerned. It appears to us, we don't know this to be the case, it appears to us that the PLC has, thus, put the documents together in the order chosen by the PLC to present to the witness.

MR. RUSS HERMAN: That is certainly true.

MR. GAY: So then they have been rearranged in accordance with how the PLC wanted them to be arranged.

MR. RUSS HERMAN: No. They have been rearranged in how I want to ask my questions.

MR. GAY: Precisely. That's what confuses

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us.

MR. RUSS HERMAN: The answer is yes.

MR. GAY: We don't know if the documents follow one another or not. Would it be feasible then --

MR. RUSS HERMAN: Wait a minute. You're going to receive a complete set of Bates stamped documents at the conclusion of this deposition in Bates stamped order. You can rearrange them for your purposes any way you want.

These documents have been chosen -- approximately two boxes of documents have been chosen out of ten boxes to question the witness on.

MR. GAY: That's my point. You have rearranged them for your purposes the way you want, that's what you have said?

MR. RUSS HERMAN: I have selected out of ten boxes those documents -- those documents that I want to question the witness about.

MR. GAY: I would like to just note for the record an objection to that, because I don't know that these documents follow each other in proper sequence.

MR. RUSS HERMAN: I don't know that any

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documents follow each other in sequence.

MR. GAY: Let me finish. That's why I'm objecting, because these things --

For example, RAT-12 is a good example. We have a June 20, 1967 typed written document about -- which consists of five pages, Bates stamped 2724.

Then we have a completely different document which was handwritten dated March 4, 1968, which follows another handwritten document --

Well, going back to the March 4, 1968 document, that is Bates stamped 2974. Immediately following that is another handwritten document Bates stamped 2903, which I do not see a date on. Then another handwritten document 2906.

The concern I have is this is being taken out of sequence and out of context, and it's difficult to deal with.

MR. RUSS HERMAN: Well, it may be difficult for you to deal with it.

MR. BERTAUT: Can we have a point of clarification for those who are trying mightily to understand?

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MR. RUSS HERMAN: Sure.

MS. BERTAUT: Did the PLC take documents in the order in which the PLC received them and consecutively Bates stamped them? Can you tell us that much?

MR. RUSS HERMAN: I will tell exactly the process, and I don't mind doing it on the record.

I was in Norfolk, Virginia, in the airport. These documents were delivered to me in great big green garbage bags and one huge box all thrown together, some and in out of files. They were then put in ten boxes -- nine boxes.

MR. BERTAUT: By the PLC?

MR. RUSS HERMAN: In no particular order, taken out of garbage bags and one big box and put in nine boxes and transported to my office in New Orleans. They were copied and Bates stamped.

Now, when you trash documents -- I'm not suggesting anything other than the fact that they were jumbled together in trash bags -- they don't come out in sequence.

My preparation for this deposition, which is my work product, I selected from all the

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Bates numbered documents those that I wanted to question the witness about.

MR. BERTAUT: My question was when you-all Bates stamped, you did it in the order in which they came out of the --

MR. RUSS HERMAN: They came out of garbage bags.

MR. COPLEY: Let me lodge my objection to it. Exhibit 12 should be complete documents. To the extent that these are a bunch of documents that don't relate to each other, I object for the implication that they somehow do relate to each other.

MR. RUSS HERMAN: You can do that.

MR. COPLEY: I just have, Russ.

MR. RUSS HERMAN: My response to your objection is: Since I can't ask questions as to substance and you have already directed the witness very early today not to let me ask predicate questions that relate to substance, then you will have to figure out the relationship among those documents, for example, in RAT-12.

MR. BERTAUT: That assumes there is such a relationship?

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MR. RUSS HERMAN: That's an assumption. Of course, in my mind, I'm just here asking questions. I think there is a relationship. I've spent a little time looking at them, but I won't guarantee it.

Can we get back on the record?

MR. DELACROIX: I think the point has been made. Let's go.

Q Let's look at RAT-12 --

MR. BERTAUT: Wait. Before you go back, can we note an objection --

MR. RUSS HERMAN: Sure.

MS. BERTAUT: -- as to the unilateral compilation or collection of documents for the exhibits, just noting the objection.

MR. RUSS HERMAN: Counsel, when we resume, if you would like to come to my office, we can do it bilaterally. I will extend that to all counsel. You are welcome to my office Sunday and Monday and assist in bilateral or multilateral arrangement of the exhibits. I'll be happy to do that.

MS. BRAUN: There is an offer we can't refuse.

MR. BERTAUT: We will see you there.

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MR. GAY: Let's move on.

MR. RUSS HERMAN: I would like to maybe get through another exhibit. Any more questions that anybody has? Good.

Q RAT-12, I will ask you about the typewritten pages 2720 through 2724. It's a five-page document dated June 20, 1967, from Mr. Johnston to Mr. Britton, Report on Presentation by Eastman Chemical Products, Inc.

Now, on the last page of that typewritten document at page 5, does it show a distribution to Mr. R. A. Tamol?

A Yes, it does.

Q The other individuals that it cc'ed to that shows that it got copies of this document. Were those Philip Morris employees?

A Yes, they were.

Q Do you recognize the signature on page 5?

A No, I don't.

Q Page 5 of the document, 2724 Bates numbers?

A No, I don't recognize the signature. No, I don't. It's not mine.

Q This document was distributed to you as an employee of Philip Morris while you were employed at Philip Morris; correct?

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A I assume so, yes.

Q This document was brought from the files that you kept at your house to Hatsy Heep's?

A I assume that's the way it got there.

Q Let's look at RAT-12. There are some handwritten notes, pages 2974, 2903, and 2906. At the top of 2974, do you see your stamp?

A Yes, I do.

Q What date is it?

A March 4, 1968.

Q I would like for you to read for us the words on this.

A The heading is "Roper - page 4 - successful brand. Unique in two or three ways. Premium in unique direction. What a brand is supposed to be before it is marketed. 5, Suggest new brand." It's upside down. "Some return to flavor brand." That is having to do with the sentence, I guess. It's a hodgepodge.

Q This is written in your handwriting?

A Yes, it is. I don't know who could write something like this.

Q It is your handwriting?

A Right. I must have been swinging from a tree or something.

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"6," starred "increasing demand and low satisfaction for Hi Fi brands," I guess, "Comment on True and Kent. "Kent True" to the side "vulnerable. 7, Marlboro smoker." Underneath it says, "Health. 9" --

Q You don't know the word next to "Marlboro smoker"?

A No, I don't.

Q It's not "worried," huh?

MR. ALLEN: Objection to the suggestion. I thought we were going to refrain from that.

Q Do you know what the word is that is struck out -- that is struck between the word -- There are two words there between "smoker" and "health." You don't know what either of those words mean?

A No, I don't.

"9, Short tobacco cigarette. 'Good Marlboro flavor - low True tar out'" something, I can't read that.

"11, suggest Hi" -- I can't read that. "Hi Fi cigarette. Trent and True market vulnerable" again. "Unfilled" to the side "consumer desire." "Unfilled," I guess. I guess it should be fulfilled.

"17, Concern over health. Marlboro smoker's concern." That is 17.

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To the side, "100 millimeter cigarettes thought to be more harmful.

"19, Health" -- I can't read that -- "an effect."

"23, nicotine."

Q To the left of the word -- the number 19?

A It says, "General concern throughout report. Nicotine" something "most harmful.

"25, Coughers switched to menthol brands." Yep. Then to the side, "Coughers," I guess.

"27, Hi Fi" maybe "charcoal, least loyalty."

Q Would you turn the page, same page, that is 2974, on its edge.

A "37, Trial of 100 millimeter brands high 67 percent.

"44" is something. "Smoke fewer cigarettes" -- I can't read that first part.

"61," with a star, "29 percent smoked half a cigarette.

"77, Direction of tar reduction." That must be part of that sentence. "Some return to flavor brands.

"68, Kool's cited as being saver."

The rest is cut off. I can't read the rest

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of that sentence on this page.

Q Would you go to 2903 of Exhibit RAT-12 and read from the top.

A It says, "Elmo Roper Report. General Comments. (1) Uniqueness, extremism, consistency of theme, I guess. (Appeal to women in early stages.)

"(2) Kool's occasional market.

"(3) Fast burning comment about PM cigarettes.

"(4) Recommends PM filter as an extreme brand in the eyes" or -- must be eyes "of millions," something of millions.

"Detailed findings. Younger giving up smoking.

"(2) Page XII or questions.

"(3) Lark - no new smokers in last six months."

Star "(4) Interest" is "trying new brands" -- "in trying new brands continues.

"(5) Non-filter smokers loyal. Conclusion - make Alpine and Paxton like Kool.

"(6) XXIII" -- might be "stale cigarettes." I don't know. Something "cigarettes.

"(7) Salem competes in the non-menthol market. Kool- confirm market" something. I can't

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read the rest of that. "Kool," I can't read after that.

"(8) Few people aware of" -- I can't make that out.

Q Would you turn to page 2906. Could you read it from the top.

A "Roper report. (1) What about placement tests, 4" something "20 plaque data. Special reports. uniqueness, extremism, consistency of theme. Women set trends. Make PM filter a" -- something "brand. It might be "milder brand." To the side it says, "Filter and menthol cigarettes. Nonfilter very loyal. States cigarettes a problem. Heavy taste" --

Q Is that "states" cigarettes or "stale"?

A I'm sorry, "stale." Yes, "stale." "Heavy taste, heavy menthol is on XXVII. Direction for Paxton. Fast burning emphasized." Then star "dry and stale."

Q Are the documents contained in RAT-12 documents either written by you or received by you in your capacity as a Philip Morris research and development employee?

A Yes.

Q These are documents which were brought from your house to Hatsy Heep's house?

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A They appear to be.

Q I have handed you RAT Exhibit 13 consisting of two documents -- of several documents. They consist of pages: 26195, 26196, 26197, 26198, which are in a handwriting. The second is a printed or typed document 26249 through 26263.

I'm going to ask you, first, about the document that is handwritten in Exhibit RAT-13, pages 26195 through pages 26198.

Sir, do you see your stamp on the first page?

A Yes, I do.

Q What is the date?

A June 30, 1966.

Q What is the title?

A "American Potential of a Health Cigarette."

Q Under that appears the name M. E. --

A "M. E. Johnston, Jr."

Q Was M. E. Johnston, Jr., an employee of Philip Morris at the time?

A Yes, he was.

Q Is the handwriting on these four pages -- these four pages yours?

A Yes, it is.

Q Is this a document made by you or written

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by you while you were an employee at Philip Morris in research and development and which was brought from your home to Hatsy Heep's?

A Yes. I wrote it at that time and apparently did come from my home to Hatsy Heep's.

Q Would you read for us beginning with the top of "Market" -- where the word "Market" is and just read it all the way through for us, please.

A Again, "Market Potential of a Health Cigarette, M. E. Johnston, Jr. Possible application to King filter.

"Page 1. Women, young women, would constitute the greatest potential market for a health cigarette.

"2. Women accept none tobacco flavor. The illusion of filtration is as important as the fact of filtration. Advertising should have greater appeal to women.

"5. Reference to habitual smoker.

"Duke, life flops - despite favorable comments in 'Readers Digest.'

"10. Health cigarette probably depends upon timing," I guess.

"11. Probably tied to the intensity of anticigarette propaganda.

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"11. Not likely - If you must smoke, smoke a health cigarette.

"12. Health filter may have some prestige value.

"16. Effectiveness of new concept. 15 percent of market - Health smokers. 510 billion, 15 percent," comes out to be "76.5 billion.

"Market Potential of a Health Cigarette." That is the same.

Q Excuse me, let's go back to 26196. It again has your stamp at the top dated June 30, 1966, doesn't it?

A Yes, that's right.

Q You have 510 billion?

A Yes, I do.

Q 510 billion what?

MR. ALLEN: Objection. That question goes to the content of interpreting what is on the document. The order permits only unintelligible handwriting be clarified. I will instruct the witness not to answer because it violates the order.

Q Does that mean that the market is 510 billion smokers, cigarettes, or dollars?

MR. ALLEN: Objection. I'm instructing the

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witness not to answer. It calls for an interpretation.

Q The next page is 26197. It is also stamped June 30, 1966?

A Yes, it is.

Q Would you continue and read that entire page.

A It's the same as 26195.

Q The only difference is that a graph paper that it was written on shows plainly on 26197 rather than 26195?

A Yes, that's the only difference I can see.

Q Look at number 5 on 26197. Do you want to read that sentence to me again, or those words.

A "Reference to" -- I will read now "habituated smoker."

Q Let's look at the second document in RAT-13. It's marked from R. A. Tamol to R. B. Seligman. Do you see that?

A Yes, I do.

Q It's dated August 9, 1966?

A Yes, I do.

Q It's stamped confidential?

A Yes.

Q Was Mr. Seligman an employee of Philip

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Morris at the time?

A Yes, he was.

Q Did this go from you to him?

A It appears so, yes, it did. I signed it.

Q Is it signed on the eighth page as R. A. Tamol?

A That's correct.

Q You carbon copied Dr. Wakeman?

A Wakeham.

Q W-a-k-e-h-a-m?

A Yes.

Q R. N. Thomson, T-h-o-m-s-o-n, F. E. Resnik, R-e-s-n-i-k, Dr. P. A. Eichorn, E-i-c-h-o-r-n, Dr. W. L. Dunn, Jr., and project 40008; is that correct?

A That's correct.

Q You show an attachment?

A Yes.

Q Does the attachment refer to document 26258?

A I haven't read this document.

MR. ALLEN: If you need it to answer the question --

THE VIDEOGRAPHER: We're going to go off the record to change the tape at approximately 4:43.

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(Off the record.)

THE VIDEOGRAPHER: We're back on the record. The time is approximately 4:44 p.m.

THE WITNESS: Yes.

Q Perhaps I can help you. Page 6 of your letter of August 9, 1996, it says, "I have attached the introductory letter, advertising copy, and reorder blank to be used in the proposed test in the appendix for your examination."

A Yes. The attachment is appropriate.

Q So pages 26249 through 26263 go together?

A Yes, they do.

Q These documents were prepared by you at Philip Morris; is that correct?

A Yes, they were.

Q And you were doing this as part of your job at research and development in August of 1966?

A Yes, I was.

Q This document went from your house to Ms. Heep's house?

A I assume that's how it got there, right.

Q In connection with your testimony today, if I haven't done so already, I'm going to reoffer as

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part of the deposition those exhibits that have been referred to and identified in the deposition as RAT-1 through RAT-13.

MR. ALLEN: In response, there were some exhibits to which an objection was posed. I would reiterate for the record those objections to those that was previously stated.

MR. RUSS HERMAN: Everybody's objections are stated and reserved.

Q Ms. Heep, in her statement, pages 52 to 54, in her deposition testimony under questioning from Philip Morris attorneys as well as Castano attorneys, including at on pages -- volume 6, page 120, and a statement at pages 16, 17, and 20, and in her deposition volume 6, pages 155 to 157, she indicates that you told her that you knew and Philip Morris knew that nicotine in tobacco products was addictive.

Did you ever tell Ms. Heep that?

MR. ALLEN: Answer.

A No, I never told her that.

Q Did you ever tell -- use any other word other than "addictive"? Ms. Heep says you also used the word "hooked." Did you ever tell Ms. Heep that nicotine hooked individuals?

A No, I never told her that.

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Q Did you ever tell anyone else or write anyone else in Ms. Heep's presence that nicotine hooked individuals or was addictive?

MR. ALLEN: Objection. Judge Chasez is clear that he may be asked whether he uttered the statements attributed to him by Ms. Heep, not whether he made statements in the presence of some other party.

For that reason I think the question violates the court's order, and I object and instruct the witness not to answer.

Q Ms. Heep says in her statement at page 60 that you admitted that Philip Morris was targeting youth or adolescence. Did you ever tell Ms. Heep that?

A I never made that statement.

Q She says that in her statement, upon questioning by Philip Morris and others, particularly volume 6 at pages 177 and 178, that Philip Morris was targeting women and that you told her that.

A No, I never told her that.

Q Now, the documents which you have just identified as being produced at Philip Morris while you were there either by yourself or someone at Philip Morris that came from your house to Hatsy Heep's

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house, do you recall any of those documents referring to enough nicotine required to keep someone hooked or words to that effect?

MR. ALLEN: Objection.

MR. DELACROIX: Object to the form of the question. That's outside the bounds of the scope of this deposition.

MR. ALLEN: I agree. I instruct him not to answer. It exceeds the permissible scope of inquiry set forth in Judge Chasez's order.

Q In Exhibit 12 and 13 we just went through, do you recall any documentation from Philip Morris or from yourself while you were working at Philip Morris that found its way from your house to Ms. Heep's house that relates to marketing or targeting youth or women for cigarette and tobacco consumption?

MR. COPLEY: Object to form.

MR. ALLEN: Same objection. Same instruction to the witness.

MR. DELACROIX: Same objection. It goes outside the judge's order. It's clearly asking for substance of information contained within the document, which Judge Chasez said on page 2 of the May 24th Minute Entry, shall not be inquired into.

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At a future deposition, yes, but not at this deposition under the present judge's order.

MR. RUSS HERMAN: You're instructing the witness not to answer?

MR. ALLEN: I'm instructing him for that reason, because the judge's order is explicit that the substance contained in the documents shall not be the subject of inquiry to the deponent.

MR. RUSS HERMAN: Mr. Tamol, it's now about 5 minutes to 5:00. I appreciate you being here today. I have a lot more to question you about.

But if we start promptly at 9:00 on Wednesday, we should be able to finish you Wednesday. I will see you at that time.

I want to thank counsel. I know he has had a very tough schedule, as most of us had. We particularly appreciate counsel working with this schedule, your counsel, so that we could do this.

THE VIDEOGRAPHER: If there are no further questions, we are off the record at approximately 4:53 p.m.

(RAT Exhibits 1 through 13 marked.)

(Deposition to be continued July 17, 1996.)

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Q You appeared there in your capacity as a representative of Ronnell, Inc.?

A That's correct.

Q This was two years after you left Philip Morris?

A That's correct.

Q Where were you living at the time?

A I believe Shady Crest Lane.

Q Was this a committee of the government you testified before?

A Yes, it was.

MR. ALLEN: Objection, whether he knows the precise --

Q Where was this testimony given, in what location?

A In Washington, D. C.

Q Ms. Heep said that you lied to OSHA in that testimony. Isn't it true you did lie to OSHA in that testimony?

MR. ALLEN: Objection, objection. Judge Magistrate Chasez's orders quite specifically said Mr. Tamol may be questioned as to whether he made a statement attributed to him by Ms. Heep but not whether the statement was substantively true.

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Heep testified to something that is alleged to have been told to her by Mr. Tamol, then Mr. Tamol can be asked: 'Did you have this conversation with Ms. Heep? Did you say this? Do you deny this, or do you admit this, or do you have another version of this conversation?'

"Whether it's true, whether the substance of what Hatsy Heep says is accurate or not, isn't the issue. The issue is whether or not he agrees with what she -- with the fact that she says it was said."

That's on page 29 of the transcript of the hearing held before Judge Chasez on May 23rd.

I think, Mr. Herman, under the Rule 40D, it is appropriate, where there is a specific court order limiting the scope of the deposition, that a witness can be instructed on not to answer.

I'm not instructing Mr. Tamol not to answer. I'm objecting for the record and advising counsel that I think it's improper to ask this question of this witness.

Q Sir, isn't it true you lied to OSHA in your testimony on November 22, 1994?

MR. ALLEN: Objection. Again, I'm instructing the witness not to answer. I will

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adopt Mr. Delacroix's remarks, in that I have exactly the same page underlined in the document before me and was prepared to read the same to you.

Q Sir, isn't it true that you, in fact, told Ms. Heep that you had lied to OSHA in those hearings of November 22, 1994?

MR. ALLEN: Answer that.

A No, I never said that.

(Off the record.)

Q Sir, isn't it true that you lied to OSHA during the hearings when you stated that Ronnell corporation had only been formed two years before November 22, 1994?

MR. ALLEN: Objection. Same objection and the same arguments that I have given before. I instruct the witness not to answer.

Q Sir, isn't it true that you lied to OSHA on November 22, 1994, when you indicated specifically that you did not have any videos such as the F.A.C.T. video evidenced in RAT-7?

MR. ALLEN: Objection. Instruct the witness not to answer.

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Q Sir, isn't it true that you lied at the OSHA hearing of November 22, 1994, when you were specifically asked whether there were any measurements taken of a particulate matter, for example, and you said that there was no videotape of any measurements taken?

MR. ALLEN: Same objection. Instruct the witness not to answer.

MR. DELACROIX: Before you move on, Mr. Herman, let me just state an objection for Philip Morris.

I think the record will leave an improper inference that these questions are not being answered, when, in fact, the objections are being made because the questions are outside the proper scope of this deposition.

I think it would be appropriate at this time to move that your questions to which there have been timely objections regarding violating the scope of Judge Chasez's orders should be stricken, and we would move to strike those questions.

MR. RUSS HERMAN: To which we take exception. We will argue about that and brief it at some other time.

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Q At page 7241 of the OSHA hearing of November 22, 1994, with regard to Ronnell, do you recall saying "No, I'm an engineering firm. I'm the president. I formed the company two years ago, particularly to put emphasis on development engineering and indoor air quality engineering"?

MR. ALLEN: Objection.

Q "Ronnell Company, it's a consulting engineering firm in Richmond, Virginia"?

MR. ALLEN: Objection to the question. Judge Chasez's order permits the deponent to be questioned about whether and under what circumstances statements attributed to him by Ms. Heep were made.

The question now posed does not relate to a statement attributed to him by Ms. Heep. Therefore, it exceeds the restrictions specified by Judge Chasez. And for that reason, the witness is instructed not to answer.

MR. RUSS HERMAN: I will only respond once, and that is that Ms. Heep said and was questioned at length in her deposition about Mr. Tamol telling her that he specifically lied to OSHA in hearings, and these questions do relate to those lies and Ms. Heep's accusation.

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I just want to state that once on the record. I'm not going to belabor it.

MR. ALLEN: I won't either. But, again on the record, at pages 28 through 30 of the transcript of the hearing or conference that took place in her chambers on May 23, 1996, the judge expounds at some length on her ruling in this regard.

Mr. Delacroix quoted the most precisely relevant language already, which appears on lines 6 through 15 on page 29 of the transcript.

Based on the Court's ruling, we impose the objection, and it's for that reason we instruct the witness not to answer the question.

MR. RUSS HERMAN: Well, in connection with the deposition of this witness, I'm going to offer and introduce into evidence of this deposition RAT-8, United States Department of Labor, Occupational Safety and Health Administration, Public Hearing, Proposed Standard for Indoor Air Quality, pages 7231 through 7477, Washington, D. C., November 22, 1994, as certified by Bayley Reporting, Inc. I'll provide Mr. Tamol with a copy of it.

At any time that you wish to answer those

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questions about whether you lied to OSHA or whether Ms. -- or reconsider that testimony, please let me know.

MS. BERTAUT: I will note an objection to that.

MR. ALLEN: I will join in the same objection. It is outside the scope of the judge's order as reflected in the previous objections to the specific questions related to the transcript.

Q Ms. Heep, in her statement and then questioned at length by Philip Morris on volume 4, at pages 13, 32, 33, and 59, stated that on March 27, 1996, you yelled, cursed, and hit her and choked her. Did you yell at her?

MR. ALLEN: Objection. Again, Mr. Herman, I think the judge is clear that the witness may be asked whether he made a statement that is attributed to him by Ms. Heep. Your inquiry does not relate to a statement attributed to him by Ms. Heep.

MR. RUSS HERMAN: You're instructing him not to answer?

MR. ALLEN: I'm instructing him not to answer.

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Q Did you curse Ms. Heep, use any curse words?

MR. ALLEN: I will allow that. That's perhaps a statement.

A No, I did not.

Q Ms. Heep said you hit her. Did you hit her?

MR. ALLEN: Same objection. I'm going to ask the witness not to answer the question. I'm going to state that objection but permit him to answer that question.

A No, I did not.

Q Did you choke her?

MR. ALLEN: Same objection for the record, but the witness is permitted to answer.

A No, I did not.

Q Did you push her?

MR. ALLEN: Same objection, but the witness is permitted to answer.

A No, I did not.

Q Ms. Heep says in her deposition under interrogation by Philip Morris in volume 4 at page 35 that you said, "You're just like my wife," referring to your first wife Elinor Tamol. Did you ever tell her that, Ms. Heep that?

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MR. ALLEN: I will permit the witness to answer that question, but I will state an objection for the record.

Because, as I understand the Court's ruling, he may be questioned about statements attributed to him by Ms. Heep which relate to the Tamol documents or document destruction, which is the central issue that brings us together for this deposition today. That inquiry is not relevant to the germane issue.

You may answer the question.

MR. COPLEY: Also object to form.

A No, I don't remember saying anything "just like my wife." I don't know how she is just like my wife. They are very different people.

Q Well, in Ms. Heep's statement at page 35 and in her statement at page 41, she says that you were angry and ranted and raved at her. Were you angry and did you rant and rave at her?

MR. ALLEN: Object as to the portion of the question which you inquire whether he was angry. The portion whether he ranted and raved might relate to that statement. I will let him answer that.

A What is the question again, two part?

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Q Yes.

MR. ALLEN: Did you rant and rave?

A No, I didn't rant and rave.

Q In her deposition volume 2 at pages 19 and 20, she indicated that you were angry with her when you yelled at her. Did you yell at her?

A This is on the 27th?

Q Yes.

A The 27th?

Q Yes, sir.

A Yes, I was angry with her. I asked her in a very, very loud voice is she going to pay me -- ever going to pay me the money she owed me. She said no.

Q Sir, didn't your -- You never said to Hatsy Heep "You're just like my first wife" or words to that effect?

MR. ALLEN: Objection, asked and answered. He already said he did not say that to her.

Q Your answer is no, you never said that, sir?

MR. ALLEN: That was his answer, Mr. Herman.

Q Sir, in your --

MR. ALLEN: Again, I also object to that on the grounds of relevance, because it has nothing

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